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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7678 of May 15, 2003**

## National Hurricane Awareness Week, 2003

**By the President of the United States of America**

**A Proclamation**

Destructive winds, tornadoes, torrential rains, ocean water storm surges, and flooding make hurricanes one of nature's most extreme hazards. As hurricane season approaches, Americans who live in hurricane-prone areas must prepare to help ensure their safety and minimize damage to their communities.

Hurricane season officially begins June 1 and continues through November 30. According to the National Oceanic and Atmospheric Administration (NOAA) and the Federal Emergency Management Agency (FEMA), an average of 10 tropical storms develop in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico, and 6 become hurricanes each year. In the past 2 years alone, 9 tropical storms and 1 hurricane hit our country, causing 54 deaths and more than $6 billion in damages. While we cannot stop these storms from occurring, we can take steps to limit our vulnerability. Being aware of the dangers of tropical storms and hurricanes and knowing what to do to mitigate their devastating effects are our best defenses.

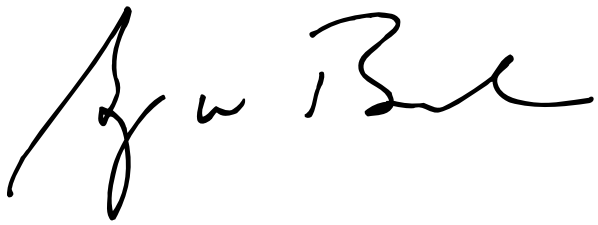
Federal, State, and local agencies across America are working diligently to prepare our communities for natural disasters. Beginning this year, NOAA's hurricane forecasts will look 5 days into the future, rather than 3 days. This enhanced forecasting ability, combined with efforts to improve the accuracy of hurricane warnings, enables coastal residents and emergency personnel to more effectively prepare for a storm's arrival. In addition, Federal agencies such as FEMA and organizations such as the American Red Cross have teamed up with State and local agencies, rescue and relief organizations, the private sector, and the news media to distribute information to the public and coordinate efforts before, during, and after a tropical storm or hurricane has struck.

To help individuals prepare for an approaching tropical storm or hurricane, FEMA recommends practical measures, to make sure that homes and businesses are ready by developing a plan for what to do; securing loose objects and protecting property by covering glass with plywood or shutters; and creating a disaster supply kit with flashlights, a battery-powered radio, food that does not need refrigeration, water, and first aid supplies. The National Weather Service also encourages acquiring a weather radio equipped with the Specific Area Message Encoder feature that provides automatic alerts when important weather information is issued for an area. For more information on how to prepare for the ravages of hazardous weather, you can go to the National Weather Service website at www.nws.noaa.gov.

Millions of Americans are at risk of being personally affected by a tropical storm or hurricane. More than one in six Americans in the continental United States lives along the Eastern Atlantic or Gulf of Mexico coast, and millions of tourists visit these areas annually. Because of the growing populations in coastal areas, it is essential that Americans prepare for hurricanes and other natural disasters. During National Hurricane Awareness Week, we promote awareness of these weather hazards, organize our efforts, and work to improve our ability to endure and survive tropical storms and hurricanes.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 18 through May 24, 2003, as National Hurricane Awareness Week. I call upon government agencies, private organizations, schools, and news media in hurricane-prone areas to share information about hurricane preparedness and response in order to help prevent storm damage and save lives. I also call upon Americans living in these coastal areas of our Nation to use this opportunity to learn more about how to protect themselves against the effects of hurricanes and tropical storms.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth 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. 03–12765
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# Presidential Documents

**Executive Order 13302 of May 15, 2003**

## Amending Executive Order 13212, Actions to Expedite Energy-Related Projects

By the authority vested in me as President by the Constitution and the laws of the United States, including section 60133 of title 49, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1.** *Amendments to Executive Order 13212.* Executive Order 13212 of May 18, 2001, as amended, is further amended by:

(a) in section 1, immediately before the period at the end of the section, inserting ''and projects that will strengthen pipeline safety'';

(b) in section 2, after ''energy-related projects'' inserting ''(including pipeline safety projects)''; and

(c) revising section 3 to read as follows:

''**Sec. 3.** *Interagency Task Force.* (a) There is established, within the Department of Energy for administrative purposes, an interagency task force (Task Force) to perform the following functions: (i) monitor and assist the agencies in their efforts to expedite their reviews of permits or similar actions, as necessary, to accelerate the completion of energy-related projects (including pipeline safety projects), increase energy production and conservation, and improve the transmission of energy;

(ii) monitor and assist agencies in setting up appropriate mechanisms to coordinate Federal, State, tribal, and local permitting in geographic areas where increased permitting activity is expected; and

(iii) perform the functions of the interagency committee for which section 60133 of title 49, United States Code, provides.

(b)(i) The Task Force shall consist exclusively of the following members:

(A) in the performance of all Task Force functions set out in sections 3(a)(i) and (ii) of this order, the Secretaries of State, the Treasury, Defense, Agriculture, Housing and Urban Development, Commerce, Transportation, the Interior, Labor, Education, Health and Human Services, Energy, and Veterans Affairs, the Attorney General, the Administrator of the Environmental Protection Agency, the Director of Central Intelligence, the Administrator of General Services, the Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Assistant to the President for Domestic Policy, the Assistant to the President for Economic Policy, and such other heads of agencies as the Chairman of the Council on Environmental Quality may designate; and

(B) in the performance of the functions to which section 3(a)(iii) of this order refers, the officers listed in section 60133(a)(2)(A)-(H) of title 49, United States Code, and such other representatives of Federal agencies with responsibilities relating to pipeline repair projects as the Chairman of the Council on Environmental Quality may designate.

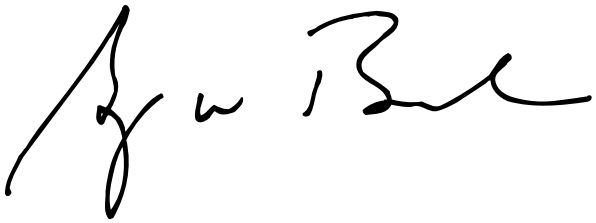
(ii) A member of the Task Force may designate, to perform the Task Force functions of the member, a full-time officer or employee of that member's agency or office.

(c) The Chairman of the Council on Environmental Quality shall chair the Task Force.

(d) Consultation in the implementation of this order with State and local officials and other persons who are not full-time or permanent part-time employees of the Federal Government shall be conducted in a manner that elicits fully the individual views of each official or other person consulted, without deliberations or efforts to achieve consensus on advice or recommendations.

(e) This order shall be implemented in a manner consistent with the President's constitutional authority to supervise the unitary executive branch.''

**Sec. 2.** *Judicial Review.* This order is intended only to improve the internal management of the Federal Government, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, instrumentalities or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
*Washington, May 15, 2003.*

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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Parts 1, 2, 15, and 15f

### Animal and Plant Health Inspection Service

### 7 CFR Part 371

### Revision of Delegations of Authority

**AGENCY:** Office of the Secretary; Animal and Plant Health Inspection Service; USDA.

**ACTION:** Final rule.

**SUMMARY:** This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department of Agriculture (USDA) principally to reflect changes and additions to the delegations required by the Farm Security and Rural Investment Act of 2002, (FSRIA); the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the reorganization of offices under the Assistant Secretary for Administration and the establishment of the Homeland Security Staff; the authority delegated to the Judicial Officer to act in certain proceeding under the Plant Variety Protection Act, as amended, and the Agricultural Adjustment Act of 1938, as amended; the Livestock Mandatory Reporting Act of 1999; the Hass Avocado Promotion, Research, and Consumer Information Act of 2000; section 14 of the Watershed Protection and Flood Prevention Act; and the responsibilities of the United States related to activities of the Office International des Epizooties.

**EFFECTIVE DATE:** Effective May 20, 2003.

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**SUPPLEMENTARY INFORMATION:**

### Farm Security and Rural Investment Act of 2002

The Secretary of Agriculture previously delegated authorities under the Farm Security and Rural Investment Act of 2002, Public Law 107–171 (FSRIA) in Secretary's Memorandum (SM) 1030–50 (July 10, 2002). This rule codifies those delegations as follows.

Title I of FSRIA authorizes the use of the Commodity Credit Corporation (CCC) to implement a number of programs for producers of agricultural commodities such as wheat, feed grains, cotton, rice, and oilseeds. Title X authorizes CCC to implement a livestock assistance program for producers who have incurred losses as the result of a natural disaster. Since Congress has routinely authorized, on an annual basis, the conduct by CCC of other similar commodity and disaster programs that consistently have been delegated to the Under Secretary for Farm and Foreign Agricultural Services, the delegations in 7 CFR 2.16 and 2.42 are amended to reflect the delegation of authority to the Under Secretary for Farm and Foreign Services and the Administrator of the Farm Service Agency, respectively, to implement all CCC-funded commodity programs that provide assistance to producers of agricultural commodities.

Additional, section 1504 of FSRIA expands the Dairy Products Mandatory Reporting program, which requires the collection and compilation of information with respect to prices, quantities sold, and inventories of dairy products in order to encourage competition, to include substantially identical products. The delegations at 7 CFR 2.21 and 2.68 are amended to reflect the delegation of this authority to the Under Secretary for Research, Education, and Economics and the Administrator of the National Agricultural Statistics Service, respectively.

Title II of FSRIA authorizes the use of the Commodity Credit Corporation (CCC) to implement a number of natural resources conservation programs. Since Congress has routinely authorized, on an annual basis, the conduct of CCC of the same or similar conservation programs that consistently have been delegated to the Under Secretary for Natural Resources and Environment, the delegations in 7 CFR 2.20 and 2.61 are amended to reflect the delegation of authority to the Under Secretary for Natural Resources and Environment and the Chief of the Natural Resources Conservation Service, respectively, to implement CCC-funded programs that provide assistance for natural resources conservation, except as elsewhere delegated.

Section 3107 of FSRIA authorized the President to establish the McGovern-Dole International Food for Education and Child Nutrition Program. By Presidential Memorandum dated March 11, 2003 (68 FR 12,569 (March 17, 2003)), the President delegated the authority to implement this program to the Secretary of Agriculture. The delegations in 7 CFR 2.16, 2.42, and 2.43, are amended to delegate to the Under Secretary for Farm and Foreign Agricultural Services and the Administrators of the Farm Service Agency and the Foreign Agricultural Service, respectively, the Secretary's authority to implement the program.

Section 4125 of FSRIA amended the Food Stamp Act to authorize a contract or grant to a nongovernmental organization meeting specified eligibility requirements to gather information on, and recommend, innovative programs for addressing common community problems. The delegations at 7 CFR 2.21 and 2.66 are amended to reflect the delegation of this authority by an SM signed September 27, 2002, to the Under Secretary for Research, Education, and Economics and the Administrator of the Cooperative State, Research, Education, and Extensions Service, respectively.

Section 4401 of FSRIA amended title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) to restore Food Stamp Program eligibility to certain disabled aliens, qualified alien children, and qualified aliens who have resided in the United States for a period of 5 years from their date of entry. The delegations at 7 CFR 2.19 and 2.57 are amended to delegate authority to administer those functions under PRWORA relating to the eligibility of aliens for benefits under the domestic food assistance programs to the Under Secretary for Food, Nutrition, and Consumer Services

and the Administrator of the Food and Nutrition Service, respectively.

Section 4402 of FSRIA directs the Secretary to establish a Seniors Farmers' Market Nutrition Program (SFMNP) to operate through 2007. The purposes of the SFMNP are to provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs from farmers' markets, roadside stands and community supported agriculture programs to low-income seniors and to increase domestic consumption of agricultural commodities by expanding and developing or aiding in the development of such outlets. The delegations at 7 CFR 2.19 and 2.57 are amended to delegate authority to administer the SFMNP to the Under Secretary for Food, Nutrition, and Consumer Services and the Administrator of the Food and Nutrition Service, respectively.

The delegations of authority at 7 CFR 2.16 and 2.42 are amended to reflect that the Under Secretary for Farm and Foreign Agricultural Services and the Administrator of the Farm Service Agency are delegated the responsibility to conduct studies and report to Congress on direct and guaranteed loan programs as required by section 5301 of FSRIA.

Title VI of FSRIA provided a number of new rural development program authorities to the Secretary. The delegations at 7 CFR 2.17 are amended to reflect delegation of these authorities to the Under Secretary for Rural Development, and 7 CFR 2.47, 2.48, and 2.49 are amended to reflect the further delegation of these authorities (with the exception of the Rural Strategic Investment Program) to the Administrators of the Rural Utilities Service (RUS), Rural Business-Cooperative Service (RBS), and Rural Housing Service (RHS), respectively, as follows: National Rural Development Partnership (RBS), the Rural Business Investment program (RBS), the Rural Telework program (RHS), the Historic Barn Preservation program (RHS), the Farm Workers Training Grant Program (RHS), the Value-Added Agricultural Product Market Development Grant program (RBS), the Agriculture Innovation Center Demonstration program (RBS), and the Rural Firefighters and Emergency Personnel Grant program (RHS), the Household Well-Water Grant program (RUS), the National Oceanic and Atmospheric Administration All-Hazards Weather Radio Transmitter Grant program (RUS), the SEARCH Grant program (RUS), and the Grants for Water Systems for Rural and Native Villages in Alaska (RUS).

Title VII of FSRIA provided a number of new research, education, economics, and extension authorities and requirements to the Secretary. The delegations at 7 CFR 2.21 are amended to reflect the delegation of these authorities to the Under Secretary for Reserach, Education, and Economics (REE), and the delegations at 7 CFR 2.65, 2.66, 2.67, and 2.68, are amended to reflect the further delegation of these authorities by the Under Secretary for REE to the Administrators of the Agricultural Research Service (ARS), Cooperative State Research, Education, and Extension Service (CSREES), Economic Research Service (ERS), and the National Agricultural Statistics Service (NASS), respectively, as follows: An overseas internship program with the Foreign Agricultural Service (CSREES); a competitive grants program for special purpose scientific research equipment (CSREES); authority for joint administration of grant programs with other Federal agencies (CSREES); a beginning farmer and rancher development program (CSREES); a program of grants to colleges and universities in insular areas for resident instruction and distance education (CSREES); a program of public education regarding use of biotechnology in producing food for human consumption (CSREES); a requirement to ensure organic agricultural product information is included in agricultural production and marketing data (NASS); a program of grants to the Girl Scouts of the United States of America, the Boy Scouts of America, National 4–H Council and the National Future Farmers of America Organization (CSREES); authority to terminate the Federal personnel appointments of certain State extension employees holding joint Federal-State employment appointments (CSREES); a requirement for the inclusion of certain data in estimates of net farm income (ERS); and a broad authority, using any legal authority available to the Secretary, to carry out agricultural research, education, and extension activities to counter chemical or biological terrorism and enhance the biosecurity of the United States (CSREES). Additionally, a grant program regarding certain diseases of wheat and barley was expanded to include diseases of triticale, specifically Tilletia indica and related fungi (ARS).

Title VII of FSRIA also included an authorization for establishment of a Senior Scientific Research Service that has been delegated through the Assistant Secretary for Administration to the Office of Human Resources Management.

Title IX of FSRIA authorizes several new programs related to energy. The delegations at 7 CFR 2.29 are amended to reflect the delegation of authority to the Chief Economist to develop guidelines and establish a voluntary labeling program for the Biobased Products Federal Procurement Program and to administer the Biodiesel Fuel Education grants program. 7 CFR 2.29 is also amended to reflect the delegation to the Chief Economist of responsibility for entering into a memorandum of understanding with the Secretary of Energy regarding hydrogen and fuel cell technology programs for rural communities and agricultural producers, and that responsibility is further delegated by the Chief Economist to the Director, Office of Energy Policy and New Uses by amendment of 7 CFR 2.73.

The delegations at 7 CFR 2.17 are amended to reflect the delegation of authority to the Under Secretary for Rural Development to administer the Renewable Energy System and Energy Efficiency Improvements program, the Biorefinery Development Grant program, and the Energy Audit and Renewable Energy Development Program, and 7 CFR 2.48 is further amended to reflect delegation of the Renewable Energy Systems and Energy Efficiency Improvements program to the Administrator of RBS.

The delegations at 7 CFR 2.21 and 2.66 are amended to reflect the delegation of authority to the Under Secretary for Research, Education, and Economics and the Administrator of CSREES to carry out a program of cooperative research and extension projects on carbon cycling and greenhouse gas exchanges from agriculture.

Title X, Subtitle E of FSRIA, titled the ''Animal Health Protection Act,'' updates and consolidates a number of animal health statutes. Section 10504 of FSRIA authorizes the Secretary to develop a program to maintain in all regions of the United States a sufficient number of Federal and State veterinarians who are well trained in recognition and diagnosis of exotic and endemic animal diseases. The delegations at 7 CFR 2.22 and 2.80 are amended to reflect the delegation of authority to administer the Animal Health Protection Act and the section 10504 veterinary program to the Under Secretary for Marketing and Regulatory Programs and to the Administrator of the Animal and Plant Health Inspection Service (APHIS). 7 CFR 371.4 is amended to reflect the delegation of this

authority further from the Administrator of APHIS to the Deputy Administrator for Veterinary Services. Titles 7 and 9 of the Code of Federal Regulations will be amended in a future rulemaking action to add the Animal Health Protection Act to authority citations and to make any other changes deemed necessary as a result of the enactment of this law.

Section 10605 of FSRIA requires the Secretary to establish a Farmers' Market Promotion Program to promote the establishment, expansion, and promotion of farmers' markets, section 10606 establishes a National Organic Certification Cost-Share program to provide funds to assist organic producers and handlers in obtaining certification under the national organic production program, and section 10607 exempts producers of 100 percent organic products from assessments under any commodity promotion law for any agricultural commodity produced on a certified organic farm. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of these authorities to the Under Secretary for Marketing and Regulatory Programs and the Administrator of the Agricultural Marketing Service, respectively.

Section 10704 authorizes the Secretary to establish the position of the Assistant Secretary for Civil Rights (ASCR). The Secretary established that position by SM 1030–57 (March 7, 2003). Accordingly, delegations of authority for civil rights previously made to the Assistant Secretary for Administration (ASA) under 7 CFR 2.24(a)(3) are transferred to the ASCR and codified in § 2.25, and the delegations to the Office of Civil Rights, currently at 7 CFR 2.89, are transferred to the ASCR under a new subpart R at § 2.300. Additionally, conforming changes are made in 7 CFR parts 15 and 15f to reflect the transfer of authority from the ASA to the ASCR.

Section 10805 of FSRIA authorizes a program of grants to the Food and Agricultural Policy Research Institute. The delegations at 7 CFR 2.21 and 2.66 are amended to reflect the delegation of this authority to the Under Secretary for Research, Education, and Economics and the Administrator of CSREES, respectively.

Section 10808(a) of FSRIA directs the Secretary of Agriculture to conduct an education program regarding the availability and safety of processes and treatments that eliminate or substantially reduce the level of pathogens on meat, meat food products, poultry, and poultry products. The delegations at 7 CFR 2.18 and 2.53 are amended to reflect the delegation of authority for this program to the Under Secretary for Food Safety and the Administrator of the Food Safety and Inspection Service.

Section 10816 of FSRIA establishes a Country of Origin Labeling program that requires retailers of specified agricultural commodities to inform consumers of the specified country of origin of those commodities. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of this authority to the Under Secretary for Marketing and Regulatory Programs and the Administrator of the Agricultural Marketing Service, respectively.

**Public Health Security and Bioterrorism Preparedness and Response Act of 2002**

Title II, Subtitle B, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law 107–188, authorizes the Secretary to regulate the possession, use, and transfer of biological agents and toxins that pose a severe threat to plant or animal health, or animal or plant products. This authority was delegated to the Under Secretary for Marketing and Regulatory Programs and authorized to be delegated further to the Administrator of APHIS by SM 1030–054 (December 6, 2002). The delegations at 7 CFR 2.22 and 2.80 are amended to reflect the delegation of the Secretary's authority to administer Title II, Subtitle B, of the Act to the Under Secretary for Marketing and Regulatory Programs and APHIS. 7 CFR 371.3 and 371.4 is amended to reflect the further delegation of this authority from the Administrator of APHIS to the Deputy Administrators of Plant Protection and Quarantine and Veterinary Services.

**Trade Act of 2002**

Section 141 of the Trade Act of 2002, Public Law 107–210, amended title II of the Trade Act of 1974 to authorize the Secretary of Agriculture to provide ''Trade Adjustment Assistance for Farmers.'' Under this program, a group of agricultural commodity producers may petition the Secretary for benefits if the Secretary determines that prices for the commodity produced by the group have declined by an amount specified in the statute and increases in imports contributed importantly to the decline. The delegations at 7 CFR 2.16 and 2.43 are amended to delegate to the Under Secretary for Farm and Foreign Agricultural Services and the Administrator, Foreign Agricultural Services, respectively, the authority to implement this new provision.

**Departmental Administration**

A number of changes are made to the delegations of authority to the Assistant Secretary for Administration and to the offices that report to him.

SM 1020–052 (August 15, 2002) established a new Homeland Security Staff and transferred the lead responsibility for hazardous materials management and federal facilities environmental compliance, previously delegated to the Director, Hazardous Materials Management Group (HMMG), to the ASA and under him, to the Director of the Office for Procurement and Property Management (OPPM), to whom the HMMG will now report. The delegations at 7 CFR 2.24, 2.25 (which as noted above become will now become the delegation for the ASCR), 2.32, and 2.93 are revised to reflect the removal of the HGGM from the published delegations and to reflect the division of the security and emergency planning and response functions formerly under the ASA and OPPM between OPPM and a new Homeland Security Staff. The ASA and OPPM are responsible for administration of the Continuity of Operations and Continuity of Government plans and the classification of information and administration of personnel security functions. The Homeland Security Staff is delegated authority for providing overall leadership and coordination of programs to plan for and respond to major natural and terrorist emergencies and threats.

The National Historic Preservation Act function and Indian affairs function are transferred from the Assistant Secretary for Congressional Relations to the ASA.

The ASA, the Director, Office of Operations, are delegated authority related to Department services for occupational health and related functions.

Responsibility for oversight of the Department Conflict Prevention and Resolution Center is transferred from the Office of Planning and Coordination to the Office of Human Resources Management (OHRM).

Finally, technical changes have been made to the delegations to the ASA and OHRM to make clear their authorities to take adverse actions are redelegable.

**Judicial Officer**

This rule simplifies the language of the delegation of authority to the Judicial Officer and makes three substantive changes to that authority.

*Plant Variety Protection Act*

Pursuant to section 63 of the Plant Variety Protection Act (7 U.S.C. 2443),

when the Plant Variety Protection Officers refuses an application for plant variety protection, the applicant may appeal to the Secretary of Agriculture. Effective December 1, 1977, the Secretary of Agriculture delegated authority to the Judicial Officer to exercise the functions of the Secretary of Agriculture where an appeal is filed under 7 U.S.C. 2443 (42 FR 61029). However, this delegation of authority is not reflected in the Code of Federal Regulations. Accordingly, this final rule amends 7 CFR 2.35 to reflect the Judicial Officer's authority to act as final deciding officer in appeals under section 63 of the Plant Variety Protection Act (7 U.S.C. 2443).

Pursuant to section 91 of the Plant Variety Protection Act, as amended (7 U.S.C. 2501), when a person notifies the Secretary of Agriculture of facts which may have a hearing on the protectability of a plant variety, the Secretary of Agriculture may cause the plant variety protection to be reexamined. This final rule delegates authority from the Secretary of Agriculture to the Judicial Officer to act as final deciding officer in reexamination proceedings under section 91 of the Plant Variety Protection Act, as amended (7 U.S.C. 2501).

*Agricultural Adjustment Act of 1938*

Pursuant to section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii), adversely affected persons may appeal allocations of marketing allotments and arbitrated disputes between processors and producers or groups of producers regarding the sharing of processors' allocations to the Secretary of Agriculture. This final rule delegates authority from the Secretary of Agriculture to the Judicial Officer to act as final deciding officer in adjudicatory proceedings under section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii), and to issue rules of practice applicable to proceedings conducted pursuant to section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii).

**Agricultural Risk Protection Act of 2000**

Sections 203(f) and 253 of the Agricultural Risk Protection Act of 2000 (Pub. L. 106–244) (''ARPA''), respectively, authorize programs for Apple Loans and Emergency Loans for Seed Producers. The delegations at 7 CFR 2.16 and 2.42 are amended to reflect the delegation of authority to administer these programs to the Under Secretary for Farm and Foreign Agricultural Services and the Administrator of the Farm Service Agency.

The V of ARPA authorizes the Secretary of Agriculture to assess civil penalties not to exceed $10,000 against any person who causes harm to, or interferes with, an animal used for official inspections by the Department of Agriculture, and to subpoena witnesses and the production of documentary evidence relating to matters under investigation. The delegations at 7 CFR 2.22, 2.80, and 371.3 are amended to reflect the delegation of this authority to the Under Secretary for Marketing and Regulatory Programs, the Administrator of APHIS, and the Deputy Administrator for Plant Protection and Quarantine.

**Livestock Mandatory Reporting Act of 1999**

The Livestock Mandatory Reporting Act of 1999 (7 U.S.C. 1635–1636(h)) established a program requiring reporting of information regarding the marketing of cattle, swine, lambs, and products of such livestock in order to provide producers, packers, and others in the marketplace with information regarding pricing, contracting, and supply and demand conditions for livestock and livestock products. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of this authority to the Under Secretary for Marketing and Regulatory Programs and the Administrator of the Agricultural Marketing Service, respectively.

**Hass Avocado Promotion, Research, and Consumer Information Act of 2000**

The purpose of the Hass Avocado Promotion, Research, and Consumer Information Act of 2000 (7 U.S.C. 7801–7813) is to establish, through assessments on Hass avocados sold by producers and importers, a coordinated program of promotion, research, industry information, and consumer information to strengthen and expand the domestic market for Hass avocados. The delegations at 7 CFR 2.22 and 2.79 are amended to reflect the delegation of this authority to the Under Secretary for Marketing and Regulatory Programs and the Administrator of the Agricultural Marketing Service, respectively.

**Office International des Epizooties (OIE)**

The Office International des Epizooties (OIE) is the international forum for setting animal health standards, reporting global animal situations and disease status, and presenting guidelines and recommendations on sanitary measures relating to animal health. The Trade Agreement Act of 1979, as amended (19 U.S.C. 2531 *et seq.*), gives the Secretary of Agriculture responsibilities related to international standards for agricultural products, which include animals and animal products. Further, section 491 of the Trade Agreement Act of 1979, as amended (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the SPS standard-setting activities of certain international standard-setting organizations, including the OIE.

The delegations at 7 CFR 2.22 and 2.80 are amended to reflect the delegation of authority for carrying out responsibilities of the United States related to activities of the OIE to the Under Secretary for Marketing and Regulatory Programs and to the Administrator of APHIS. 7 CFR 371.4 is amended to reflect the delegation of this authority further from the Administrator of APHIS to the Deputy Administrator for Veterinary Services.

**Watershed Protection and Flood Prevention Act**

Section 313 of the Grain Standards and Warehouse Improvement Act of 2002, Public Law 106–472, added a new section 14 to the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012) authorizing the Secretary to provide technical and financial assistance to sponsoring organizations to rehabilitate water resource projects owned and operated by the sponsors that were installed under programs administered by the Natural Resources Conservation Service. The delegations at 7 CFR 2.20 and 2.61 are amended to reflect the delegation of that authority by SM 1030–049 (January 16, 2002) to the Under Secretary for Natural Resources and Environment and the Chief, Natural Resources Conservation Service, respectively.

**Miscellaneous**

A number of miscellaneous minor changes have been made to the delegations for other reasons. The delegation of authority in 7 CFR 1.189 to take final action in matters covered by the Equal Access to Justice Act, 5 U.S.C. 504, is revised. The headings for 7 CFR part 2, subpart N, § 2.22, and § 2.80(a) are revised to reflect the change in the title of the policy official

responsible for Marketing and Regulatory Programs. The title of this position was changed from ''Assistant Secretary'' to ''Under Secretary'' by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Pub. L. 105–277). References in 7 CFR 2.22 and 2.80 references to statutes repealed by the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772) are removed. The delegations of authority for outreach and technical assistance to socially disadvantaged farmers and ranchers under 7 U.S.C. 2279 have been revised to reflect the fact that this authority has been removed from the Natural Resources Conservation Service, and that the authority to enter into contracts and other agreements pursuant to 7 U.S.C. 2279 has been transferred from the Assistant Secretary for Administration and Office of Outreach to the Under Secretary for Research, Education, and Economics and the Cooperative State Research, Education, and Extension Service. The reservations of authority by the Secretary in 7 CFR 2.22(b)(2) related to animal and plant health inspection are amended to update the authority citations.

Additional changes have been made to the REE mission area delegations to reflect the repeal of authorities, to consolidate some paragraphs, and to clarify the delegation regarding the McIntire-Stennis Cooperative Forestry Program.

**Classification**

Finally, this rules relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Orders 12866 and 12988. This action is not a rule as defined by the Regulatory Flexibility Act, Pub. L. 96–354, and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.,* and thus is exempt from the provisions of those Acts.

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects**

*7 CFR Part 1*

Administrative practice and procedure, Authority delegations (Government agencies), Equal access to justice.

*7 CFR Part 2*

Authority delegations (Government agencies).

*7 CFR Part 15*

Administrative practice and procedure, Authority delegations (Government agencies), Civil rights, Nondiscrimination.

*7 CFR Part 15f*

Administrative practice and procedure, Authority delegations (Government agencies), Civil rights.

*7 CFR Part 371*

Authority delegations (Government agencies).

■ Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below:

## PART 1—ADMINISTRATIVE REGULATIONS

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

**Authority:** 5 U.S.C. 301, unless otherwise noted. Subpart J also issued under 5 U.S.C. 504(c)(1).

■ 2. Revise § 1.189 to read as follows:

### § 1.189 Delegations of authority.

(a) Except as provided in paragraph (b) of this section, the Secretary of Agriculture delegates to the Judicial Officer authority to take final action on matters pertaining to the Act in proceedings covered by these rules. The Secretary by order may delegate authority to take final action on matters pertaining to the Act in particular cases to other subordinate officials or bodies.

(b)(1) The Secretary of Agriculture delegates to the Director of the National Appeals Division authority to take final actions on matters pertaining to the Act for proceedings under 7 CFR part 11.

(2) With respect to proceedings covered under § 1.183(b)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

## PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

■ 1. The authority for Part 2 continues to read as follows:

**Authority:** 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953; 3 CFR 1949–1953 Comp., p. 1024.

## Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

■ 2.–3. Revise § 2.4 to read as follows:

### § 2.4 General officers.

The work of the Department is under the supervision and control of the Secretary who is assisted by the following general officers: the Deputy Secretary, the Under Secretary for Farm and Foreign Agricultural Services; the Under Secretary for Rural Economic and Community Development; the Under Secretary for Food Safety; the Under Secretary for Food, Nutrition, and Consumer Services; the Under Secretary for Natural Resources and Environment; the Under Secretary for Research, Education, and Economics; the Under Secretary for Marketing and Regulatory Programs; the Assistant Secretary for Congressional Relations; the Assistant Secretary for Administration; the Assistant Secretary for Civil Rights; the General Counsel; the Inspector General; the Chief Financial Officer; the Chief Information Officer; the Judicial Officer; the Director, Office of Budget and Program Analysis; the Chief Economist; the Director, National Appeals Division; and the Director of Communications.

■ 4. Amend § 2.16 to add paragraphs (a)(1)(xxv), (a)(1)(xxvi), (a)(2)(xiv), (a)(2)(xv), (a)(3)(xliii), and (a)(3)(xliv) to read as follows:

### § 2.16 Under Secretary for Farm and Foreign Agricultural Services

(a) * * *

(1) * * *

(xxv) Administer all programs of the Commodity Credit Corporation that provide assistance with respect to the production of agricultural commodities, including disaster assistance and the domestic marketing of such commodities, except as may otherwise be reserved by the Secretary of Agriculture.

(xxvi) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Under Secretary for Farm and Foreign Agricultural Services:

(A) The equitable relief provisions of section 1613 (7 U.S.C. 7996).

(B) The tracking of benefits under section 1614 (7 U.S.C. 7997).

(C) The development of a plan and related report to coordinate land retirement and agricultural working land conservation programs under section 2005 (16 U.S.C. 3801 note).

* * * * *

(2) * * *

(xiv) Administer programs for Apple Loans and Emergency Loans for Seed

Producers under sections 203(f) and 253, respectively, of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1421 note, Pub. L. 106–224).

(xv) Administer evaluations of direct and guaranteed loan programs under section 5301 of the Farm security and Rural Investment Act of 2002 (7 U.S.C. 1922 note).

* * * * *

(3) * * *

(xliii) Implement provisions of the Trade Act of 1974 regarding adjustment assistance for farmers (19 U.S.C. 2401–2401g).

(xliv) Implement section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 173o–1), expect for the authority to designate Federal agencies under section 3107(d) that is reserved to the President.

* * * * *

■ 5. Amend § 2.17 to revise paragraphs (a)(20)(iv), (a)(21)(ii), (a)(21)(xi), and (a)(22)(i), and add new paragraphs (a)(20)(x), (a)(21)(xxi), (a)(21)(xxii), (a)(21)(xxiii), (a)(22)(vi), (a)(24), (a)(25), and (a)(26) to read as follows:

**§ 2.17 Under Secretary for Rural Development.**

(a) * * *

(20) * * *

(iv) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306 (7 U.S.C. 1926), related to water and waste facilities.

(B) Section 306A (7 U.S.C. 1926a).

(C) Section 306B (7 U.S.C. 1926b).

(D) Section 306C (7 U.S.C. 1926c).

(E) Section 306D (7 U.S.C. 1926d).

(F) Section 306E (7 U.S.C. 1926e).

(G) Section 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities.

(H) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development

(I) Section 310B(b) (7 U.S.C. 1932(b)).

(J) Section 310B(i) (7 U.S.C. 1932(i)), relating to loans for business telecommunications partnerships.

(K) Administrative Provisions of subtitle D of the consolidated Farm and Rural Development act relating to rural utility activities.

(L) Section 379B (7 U.S.C. 2008p).

* * * * *

(x) Administer the SEARCH Grants for Small Communities Program (7 U.S.C. 2009ee *et seq.*)

(21) * * *

(ii) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(A) Section 306(a)(110(A) (7 U.S.C. 1926(a)(11)(A)), relating to grants for business technical assistance and planning.

(B) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises.

(C) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development.

(D) Section 310B (7 U.S.C. 1932), relating to rural industrialization assistance, rural business enterprises grants and rural technology and cooperative development grants.

(E) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises.

(F) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural business-cooperative activities.

(G) Section 378 (7 U.S.C. 2008m) relating to the National Rural Development Partnership;

(H) Section 384A *et seq.* (7 U.S.C. 2009cc *et seq.*) relating to the Rural Business Investment Program;

(I) Section 385A *et seq.* (7 U.S.C. 2009dd *et seq.*) relating to Rural Strategic Investment Program.

* * * * *

(xi) Administer the assets of the Alternative Agricultural Research and Commercialization Corporation and the funds in the Alternative Agricultural Research and Commercialization Fund in accordance with section 6201 of the Farm Security and Rural Investment Act of 2000 (note to 7 U.S.C. 5901 (repealed)).

* * * * *

(xxi) Administer the Value-Added Agricultural Product Market Development Grant program (note to 7 U.S.C. 1621).

(xxii) Administer the Agriculture Innovation Center Demonstration program (note to 7 U.S.C. 1621).

(xxiii) Administer the Renewable Energy System and Energy Efficiency Improvements program (7 U.S.C. 8106).

(22) *Related to rural housing.* (i) Administer the following under the Consolidated Farm and Rural Development Act ( 7 U.S.C. 1921 *et seq.*):

(A) Section 306 (7 U.S.C. 1926), except with respect to financing for water and waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11).

(B) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities.

(C) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural housing activities.

(D) Section 379 (7 U.S.C. 2008n) relating to the Rural Telework program;

(E) Section 379A (7 U.S.C. 2008o) relating to the Historic Barn Preservation program; and

(F) Section 379C (7 U.S.C. 2008q) relating to the Farm Workers Training Grant program.

* * * * *

(vi) Administer the Rural Firefighters and Emergency Personnel Grant program (7 U.S.C. 2655).

* * * * *

(24) Administer the Biorefinery Development Grant program (7 U.S.C. 8103).

(25) Administer the Energy Audit and Renewable Energy Development program (7 U.S.C. 8105).

(26) *Related cooperative agreements.* Enter into cooperative agreements with other Federal agencies, State and local governments, and any other organizations or individuals to improve the coordination and effectiveness of Federal programs, services, and actions affecting rural areas, including the establishment and financing of interagency groups, as long as the objectives of the agreement will serve the mutual interest of the parties in rural development activities (7 U.S.C. 2204b(b)(4)).

* * * * *

■ 6. Amend § 2.18 to revise paragraphs (a)(1)(ii)(F) and (G) and add paragraph (a)(1)(ii)(H) to read as follows:

**§ 2.18 Under Secretary for Food Safety.**

(a) * * *

(1) * * *

(ii) * * *

(F) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products;

(G) Administer and conduct a Food Safety Research Program (7 U.S.C. 427); and

(H) Conduct an education program regarding the availability and safety of processes and treatments that eliminate or substantially reduce the level of pathogens on meat, meat food products, poultry, and poultry products (21 U.S.C. 679b).

* * * * *

■ 7. Amend § 2.19 to revise paragraph (a)(l)(i) and add paragraph (a)(1)(vi) to read as follows:

**§ 2.19 Under Secretary for Food, Nutrition, and Consumer Services.**

(a) * * *

(1) * * *

(i) Administer the following legislation:

(A) the Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032).

(B) Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section thereof.

(C) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790).

(D) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note).

(E) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).

(F) Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007).

* * * * *

(vi) Administer those functions under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612) relating to the eligibility of aliens for benefits under the domestic food assistance programs.

* * * * *

■ 8. Amend § 2.20 as follows:

■ a. Revise paragraphs (a)(3)(iv)(E), (a)(3)(xiii), (a)(3)(xvi), and (a)(3)(xviii),

■ b. Remove paragraph (a)(3)(xix) and (a)(9),

■ c. Redesignate paragraph (a)(3)(xx) as (xix) and paragraph (a)(3)(xxii) as paragraph (a)(3)(xii). The revisions read as follows:

**§ 2.20 Under Secretary for Natural Resources and Environment.**

(a) * * *

(3) * * *

(iv) * * *

(E) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1010, including rehabilitation of water resource structural measures constructed under certain Department of Agriculture programs under 16 U.S.C. 1012, except for responsibilities assigned to the Under Secretary for Rural Development.

* * * * *

(xiii) Except as otherwise delegated, administer natural resources conservation authorities, including authorities related to programs of the Commodity Credit Corporation that provide assistance with respect to natural resources conservation, under Title XII of the Food Security Act of 1985 (the Act), as amended (16 U.S.C. 3801 *et seq.*), including the following:

(A) Technical assistance related to the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823).

(B) Technical assistance related to the Conservation Reserve Program authorized by sections 1231–1235A of the Act (16 U.S.C. 3831–3835a).

(C) The Wetlands Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237F of the Act (16 U.S.C. 3837–3837f) and the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act, Public Law 103–75.

(D) The Conservation Security Program authorized by sections 1238–1238C (16 U.S.C. 3838–3838c).

(E) The Farmland Protection Program authorized by sections 1238H–1238I of the Act (16 U.S.C. 3838h–3838i).

(F) The Farm Viability Program authorized by section 1238J of the Act (16 U.S.C. 3838j).

(G) The Environmental Easement Program authorized by sections 1239–1239D of the Act (16 U.S.C. 3839–3839d).

(H) The Environmental Quality Incentives Program authorized by sections 1240–1240I of the Act (16 U.S.C. 3839aa–3839aa–9).

(I) The conservation of private grazing lands authorized by section 1240M of the Act (16 U.S.C. 3839bb).

(J) The Wildlife Habitat Incentives Program authorized by section 1240N of the Act (16 U.S.C. 3839bb–1).

(K) The program for soil erosion and sedimentation control in the Great Lakes basin authorized by section 1240P of the Act (16 U.S.C. 3839bb–3).

(L) The delivery of technical assistance under section 1242 of the Act (16 U.S.C. 3842), including the approval of persons or entities outside of USDA to provide technical services.

(M) The authority for partnerships and cooperation provided by section 1243 of the Act (16 U.S.C. 3843), except for responsibilities assigned to the Under Secretary for Farm and Foreign Agricultural Services.

(N) The incentives for beginning farmers and ranchers and Indian tribes and the protection of certain proprietary information related to natural resources conservation programs as provided by section 1244 of the Act (16 U.S.C. 3844), except for responsibilities assigned to the Under Secretary for Farm and Foreign Agricultural Services.

* * * * *

(xvi) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Under Secretary for Natural Resources and Environment:

(A) The equitable relief provisions of section 1613 (7 U.S.C. 7996).

(B) The tracking of benefits under section 1614 (7 U.S.C. 7997).

(C) The development of a plan and related report to coordinate land retirement and agricultural working land conservation programs under section 2005 (16 U.S.C. 3801 note).

* * * * *

(xviii) Administer the agricultural management assistance provisions of section 524(b) of the Federal Crop Insurance Act, as amended (7 U.S.C. 1524(b)), except for responsibilities assigned to the Under Secretary for Farm and Foreign Agricultural Services.

* * * * *

■ 9. Amend § 2.21 as follows:

■ a. Remove and reserve paragraphs (a)(1)(xxvi), (a)(1)(lxiii), (a)(1)(lxxxvii), (a)(1)(cxxii), and (a)(1)(cxlii);

■ b. Revise paragraphs (a)(1)(x), (a)(1)(xxxi), (a)(1)(xxxv), (a)(1)(liii), (a)(1)(ciii), (a)(1)(cxli), (a)(1)(clvii), and (a)(1)(clxiv);

■ c. Add new paragraphs (a)(1)(lv), (a)(1)(lxxviii), (a)(1)(lxxxii), (a)(1)(lxxxiii), (a)(1)clxxii) through (a)(1)(clxxxii), and (a)(8)(xiv) through (a)(1)(xvi); to read as follows:

**§ 2.21 Under Secretary for Research, Education, and Economics.**

(a) * * *

(1) * * *

(x) Evaluate, assess, and report to congressional agriculture committees on the merits of proposals for agricultural research facilities in the States, and ensure that each research activity conducted by an Agricultural Research Service facility serves a national or multistate need (7 U.S.C. 390 *et seq.*).

* * * * *

(xxvi) [Removed and reserved]

* * * * *

(xxxi) Make grants and enter into contracts and other agreements for outreach and technical assistance to socially disadvantaged farmers and ranchers (7 U.S.C. 2279(a)(3)).

* * * * *

(xxxv) Administer, in cooperation with land-grant colleges and universities where applicable, a rural development research and extension program, a small farm research and extension program, and a rural health and safety education program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

* * * * *

(liii) Provide policy direction and coordinate the Department's work with

national and international institutions and other persons throughout the world in the performance of agricultural research, extension, teaching, and development activities; administer a program of competitive grants for collaborative projects involving Federal scientists or scientists from colleges and universities working with scientists at international agricultural research centers in other nations focusing either on new technologies and programs for increasing the production of food and fiber or training scientists and a program of competitive grants to colleges and universities to strengthen United States economic competitiveness and to promote international market development; establish a program in coordination with the Foreign Agricultural Service to place interns from United States colleges and universities at Foreign Agricultural Service field offices overseas; and provide a biennial report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on efforts of the Federal Government to coordinate international agricultural research within the Federal Government, and to more effectively link the activities of domestic and international agricultural researchers, particularly researchers of the Agricultural Research Service (7 U.S.C. 3291, 3292b).

* * * * *

(lv) Administer a program of competitive grants to colleges and universities and State cooperative institutions for the acquisition of special purpose scientific research equipment for use in the food and agricultural sciences (7 U.S.C. 3310a).

* * * * *

(lxiii) [Removed and reserved]

(lxxviii) Administer a rural electronic commerce extension program through grants to regional rural development centers and competitive grants to land-grant colleges and universities and to colleges and universities (including community colleges) with agricultural or rural development programs (7 U.S.C. 5923).

* * * * *

(lxxxii) Administer competitive grants to support research and extension activities regarding organically grown and processed agricultural commodities (7 U.S.C. 5925b).

(lxxxiii) Facilitate access, through the Economic Research Service and the Agricultural Research Service (including the National Agricultural Library), by research and extensions professionals, farmers, and other interested persons in the United States to, and the use by those persons of, organic research conducted outside the United States (7 U.S.C. 5925d).

* * * * *

(lxxxvii) [Removed and reserved]

* * * * *

(ciii) Administer a cooperative forestry program in accordance with the McIntire-Stennis Cooperative Forestry Act, and administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 582A–582A–8).

* * * * *

(cxxii) [Removed and reserved]

* * * * *

(cxli) Implement and administer the Community Food Projects Program and the Innovative Programs for Addressing Common Community Problems pursuant to the provisions of section 25 of the Food Stamp Act of 1977 (7 U.S.C. 2034).

(cxlii) [Removed and reserved]

* * * * *

(clvii) Administer an Initiative for Future Agriculture and Food Systems (7 U.S.C. 7621).

* * * * *

(clxiv) Administer grants to consortia of land-grant colleges and universities to enhance the ability of the consortia to carry out multi-State research projects aimed at understanding and combating diseases of wheat, triticale, and barley caused by Fusarium graminearum and related fungi or Tilletia indica and related fungi (7 U.S.C. 7628).

* * * * *

(clxxii) Cooperate with other Federal agencies (including the National Science Foundation) in issuing joint requests for proposals, awarding grants, and administering grants under any competitive agricultural research, education, or extension grant program (7 U.S.C. 3319b).

(clxxiii) Administer a program of competitive grants, establish education teams, and establish an online clearinghouse of curricula and training materials and programs, all for training, education, outreach, and technical assistance initiatives for the benefit of beginning farmers and ranchers (7 U.S.C. 3319f).

(clxxiv) Administer agricultural research, education, and extension activities (including through competitive grants), using any authority available to the Secretary, to reduce the vulnerability of the United States food and agricultural system to chemical or biological attack, to continue partnerships with institutions of higher education and other institutions to help form stable, long-term programs to enhance the biosecurity of the United States, to make competitive grants to universities and qualified research institutions for research on counterbioterrorsims, and to counter or otherwise respond to chemical or biological attack (7 U.S.C. 3351).

(clxxv) Administer a program of competitive grants to colleges and universities for expansion and security upgrades to enhance the security of agriculture against bioterrorism threats (7 U.S.C. 3352).

(clxxvi) Administer programs for distance education grants and resident instruction grants to eligible institutions in insular areas that have demonstrable capacity to carry out teaching and extension programs in the food and agricultural sciences (7 U.S.C. 3361–3363).

(clxxvii) Develop and implement a program to communicate with the public regarding the use of biotechnology in producing food for human consumption (7 U.S.C. 5921a).

(clxxviii) Administer a program of cooperative research (including through competitive award of grants and cooperative agreements to colleges and universities) and extension projects on carbon cycling in soils and plants, the exchange of other greenhouse gases from agriculture, and the carbon sequestration benefits of conservation practices (7 U.S.C. 6711).

(clxxix) Administer a program, in coordination with State veterinarians and other appropriate State animal health professionals, to conduct research, testing, and evaluation of programs for the control and management of Johne's disease in livestock (7 U.S.C. 7629).

(clxxx) Administer a program of grants to the Girl Scouts of the United States of America, the Boy Scouts of America, the National 4–H Council, and the National FFA Organization to establish pilot projects to expand the programs carried out by the organizations in rural areas and small towns (7 U.S.C. 7630).

(clxxxi) Oversee implementation of the termination of Federal schedule A civil service appointments of State agricultural extension employees at land-grant colleges and universities (section 7220 of Pub. L. 107–171).

(clxxxii) Administer a program of grants to the Food and Agricultural Policy Research Institute (section 10805 of Pub. L. 107–171).

* * * * *

(8) * * *

(xiv) Ensure that segregated data on the production and marketing of organic

agricultural products is included in the ongoing baseline of data collection regarding agricultural production and marketing (7 U.S.C. 5925c).

(xv) Administer a program of mandatory reporting for dairy products and substantially identical products (7 U.S.C. 1637a, 1637b).

(xvi) Include in each issuance of projections of net farm income an estimate of the net farm income earned by commercial producers in the United States that will in addition show the estimate of net farm income attributable to commercial producers of livestock, loan commodities, and agricultural commodities other than loan commodities (7 U.S.C. 7998).

* * * * *

■ 10. Amend § 2.22 to revise the heading, the introductory text of paragraph (a), and paragraphs (a)(5) and (b)(2), and to add new paragraphs (a)(1)(viii)(CCC) through (a)(1)(viii)(FFF), (a)(2)(xlvii), (a)(2)(xlviii), (a)(2)(xlix), (a)(2)(xlx) to read as follows:

**§ 2.22 Under Secretary for Marketing and Regulatory Programs**

(a) The following delegations of authority are made by the Secretary to the Under Secretary for Marketing and Regulatory Programs:

* * * * *

(1) * * *

(viii) Exercise the functions of the Secretary of Agriculture with respect to the following programs:

(CCC) Farmers' Market Promotion Program (7 U.S.C. 2005).

(DDD) National Organic Certification Cost-Share Program (7 U.S.C. 6523).

(EEE) Exemption of Certified Organic Products from Assessment (7 U.S.C. 7401).

(FFF) Country of Origin Labeling (7 U.S.C. 1638–1638(d)).

(GGG) Hass Avocado Promotion, Research, and Consumer Information Act of 2000 (7 U.S.C. 7801–7813).

* * * * *

(2) * * *

(xlvii) Animal Health Protection Act (7 U.S.C. 8301–8317).

(xlviii) Section 10504 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8318).

(xlix) Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e and 2279f).

(xlx) The responsibilities of the United States related to activities of the Office of International des Epizooties.

* * * * *

(5) *Related to defense and emergency preparedness.*

(i) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(ii) Title II, Subtitles B and C, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8401 note, 8401, 8411).

* * * * *

(b) * * *

(2) *Related to animal and plant health inspection.*

(i) Determination that an emergency or extraordinary emergency exists under the Animal Health Protection Act (7 U.S.C. 8306, 8316).

(ii) Determination that an emergency or extraordinary emergency exists under the Plant Protection Act (7 U.S.C. 7715, 7772).

(iii) Approval of requests for apportionment of reserves for the control of outbreaks of insects, plant diseases, and animal diseases to the extent necessary to meet emergency conditions (31 U.S.C. 1512).

* * * * *

**§ 2.23 [Amended]**

■ 11. Remove in § 2.23 paragraphs (a)(2)(v) and (a)(3).

■ 12. Amend § 2.24 as follows:

■ a. Revise paragraphs (a)(4)(viii), (a)(5)(i), (a)(6)(vii), (a)(6)(ix)(L), (a)(6)(ix)(M), (a)(9), (a)(10), and (a)(17),

■ b. Remove and reserve paragraphs (a)(3), (a)(4)(ii), (a)(6)(x)(T), (a)(7)(xv), and (a)(14),

■ c. Remove paragraph (a)(14) added at 65 FR 77756, Dec. 13, 2003,

■ d. Add new paragraphs (a)(6)(xxv), (a)(6)(xxvi), (a)(18), (a)(19), and (a)(20) to read as follows:

**§ 2.24 Assistant Secretary for Administration.**

(a) * * *

(3) [Removed and reserved]

(4) * * *

(ii) [Removed and reserved]

* * * * *

(viii) Establish requirements and procedures for reporting agency outreach status and accomplishments including Departmental reporting under the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program (7 U.S.C. 2279).

(5) * * *

(i) Provide services for Department headquarters in the Washington, DC metropolitan area and at emergency relocation sites and certain critical facilities specified by the Assistant Secretary for Administration in the following areas:

(A) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments;

(B) Acquiring, storing, distributing, and disposing of forms;

(C) Mail management and all related functions; and

(D) Occupational health services and related functions.

* * * * *

(6) * * *

(vii) Authorize and make final decisions on adverse actions, except in those cases where the Assistant Secretary for Administration has participated.

* * * * *

(ix) * * *

(L) Authorize and make final decisions on adverse actions for positions in GS–1–15 or equivalent;

(M) Authorize and make final decisions on adverse actions for positions in the career Senior Executive Service or equivalent;

* * * * *

(x) * * *

(T) [Removed and reserved]

* * * * *

(xxv) Formulate and issue Department policy, standards, rules, and regulations relating to the Senior Scientific Research Service (7 U.S.C. 7657).

(xxvi) Redelegate, as appropriate, any authority delegated under paragraph (a)(6) to general officers of the Department and heads of Departmental agencies.

(7) * * *

(xv) [Removed and reserved]

* * * * *

(9) *Related to emergency preparedness.* Provide guidance to the development and administration of the Department's Continuity of Operations Plan and to USDA participation in the Continuity of Government Plan. This includes:

(i) Managing the Department Emergency Operations Center and alternate facilities.

(ii) Providing guidance and direction regarding continuity of operations to Departmental staff offices, mission areas, and agencies.

(iii) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations concerning matters of assigned responsibilities.

(iv) Overseeing Department continuity of operations, planning, and emergency relocation facilities to ensure that resources are in a constant state of readiness.

(10) *Related to compliance with environmental laws and environmental*

*management systems.* (i) Take action pursuant to Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to comply with environmental pollution control laws with respect to facilities and activities under his or her authority, including, but not limited to, entering into inter-agency agreements, administrative consent orders, consent judgments, or other agreements with the appropriate Federal, State, interstate, or local agencies to achieve and maintain compliance with applicable pollution control standards.

(ii) Provide program leadership and oversight for USDA compliance with applicable pollution control laws and executive orders, including Executive Order 13148, Greening of the Government Through Leadership in Environmental Management.

(iii) Provide program leadership and coordination for USDA's energy conservation and energy efficiency activities, and serve as USDA's principal Energy Conservation Officer, pursuant to Executive Order 13123, Greening of the Government Through Efficient Energy Management.

(iv) Promulgate policies, standards, techniques, and procedures, and represent the Department, in prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243).

(v) Review and approve exemptions for USDA contracts, subcontracts, grants, agreements, and loans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the Environmental Protection Agency (40 CFR 32.215(b)).

(vi) Coordinate USDA waste prevention, recycling, and procurement, acquisition and use of recycled products and environmentally preferable products, including biobased products, and services, and serve as a USDA Environmental Executive, pursuant to Executive Order 13101.

(vii) Serve on the USDA Hazardous Materials Policy Council.

(viii) Represent USDA in consulting or working with the Environmental Protection Agency (EPA), the Council on Environmental Quality, the Domestic Policy Council, and others to develop policies relating to hazardous materials management and Federal facilities compliance with applicable pollution control laws.

(ix) Monitor, review, evaluate, and oversee hazardous materials management program activities and compliance Department-wide.

(x) Monitor, review, evaluate, and oversee USDA agency expenditures for hazardous materials management program accomplishments.

(xi) Prepare for the USDA Hazardous Materials Policy Council the Hazardous Materials Management Program budget request to the Office of Management and Budget (OMB) and Congress, prepare accomplishment reports to Congress, OMB, and EPA, and take a lead role in the preparation of replies to Congressional inquires.

(xii) Represent USDA on the National Response Team on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, *et seq.*); the Clean Water Act, as amended (33 U.S.C. 1251, *est seq.*); Oil Pollution Act, as amended (33 U.S.C. 2701, *et seq.*); Executive Order 12580, 3 CFR, 1987 Comp., p. 193; Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300.

(xiii) Approve disbursements from the New World Mine Response and Restoration Account, approve the New World Mine Response and Restoration Plan, and make quarterly reports to Congress under Sections 502(d) and (f) of Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Public Law 105–83.

(xiv) Ensure that the Hazardous Materials Management Program Department-wide is accomplished with regard to, and in compliance with, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

(xv) Take such action as may be necessary, with the affected agency head and with the concurrence of the General Counsel, including issuance of administrative orders and agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order 12580, as amended by Executive Order 13016.

* * * * *

(14) [Removed and reserved]

* * * * *

(17) *Related to budget and finance.* Exercise general financial and budget authority over all organizations assigned to the Assistant Secretary for Administration.

(18) *Related to historic preservation.* Administer the implementation of the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.,* Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(19) *Related to interactions with American Indians.* Serve as the official with the principal responsibility for the implementation of Executive order 13175, including consultation and collaboration with tribal officials, and coordinate the Department's programs involving assistance to American Indians and Alaska Natives.

(20) *Relating to personnel security and the safeguarding of national security information:*

(i) Direct and administer USDA's personnel security and public trust programs established pursuant to Executive Order 12968, Access to Classified Information (3 CFR 1995 Comp. pp 391–402) and 5 CFR 731.

(ii) Manage the personnel security functions of the Department including programs for eligibility access determinations, obtaining security clearances for USDA employees, denial or revocation of access to national security information, and developing and promulgating policies and training.

(iii) Direct and administer USDA's program under which information is safeguarded pursuant to Executive Order 12958, Classified National Security Information.

(iv) Establish Information Security (INFOSEC) policies and procedures for classifying, declassifying, safeguarding, and disposing of classified national security information and materials.

(v) Establish procedures under which authorized holders of information may challenge the classification of information believed to be improperly classified or unclassified.

(vi) Take corrective action for violations or infractions under section 5.7, par. (b), of Executive Order 12958.

(vii) Develop and maintain a secure facility for the receipt and safeguarding of classified material.

(viii) Coordinate security activities with the Chief Information Officer who

has primary responsibility for PDD 63, Critical Infrastructure Assurance.

* * * * *

■ 13. Redesignate § 2.25 to Subpart C and revise to read as follows:

**§ 2.25 Assistant Secretary for Civil Rights.**

(a) The following delegations of authority are made by the Secretary to the Assistant Secretary for Civil Rights:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery, compliance, and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in Federally assisted programs.

(ii) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment.

(iii) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.,* prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department.

(iv) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department.

(v) Actions to enforce Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded by the Department.

(vi) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA conducted programs.

(vii) Actions to enforce Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12131, *et seq.,* prohibiting discrimination against individuals with disabilities in State and local government services.

(viii) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate.

(ix) Actions to develop and implement the Department's Federal Women's Program.

(x) Actions to develop and implement the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate Departmental agencies and systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(5) Coordinate with the Department of Justice on matters relating to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department pursuant to § 15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to § 15.8(a) of this title relating to compliance by ''other means authorized by law.''

(11) Make determinations required by § 15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations, after legal sufficiency reviews by the Office of the General Counsel, that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate.

(13) Perform investigations and make final determinations, after legal sufficiency reviews by the Office of the General Counsel, on both the merits and required corrective action, as to complaints filed under part 15d of this title.

(14) Conduct investigations and compliance reviews Departmentwide.

(15) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(16) Coordinate the Department's affirmative employment program, special emphasis programs, Federal Equal Opportunity Recruitment Program, equal employment opportunity evaluations, and development of policy.

(17) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission and the Office of Personal Management.

(18) Monitor, evaluate, and report on agency compliance with established policy and Executive Orders which further the participation of historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(19) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity (EEO), to provide equal opportunity services for managers and employees, and to make final agency decisions, after legal sufficiency reviews by the Office of the General Counsel, on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(20) Maintain liaison with historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment, and assist Department agencies in strengthening such institutions by

facilitating institutional participation in Department programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(21) Administer the Department's EEO Program.

(22) Oversee and manage the EEO counseling function for the Department.

(23) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(24) Process formal EEO discrimination complaints by employees or applicants for employment.

(25) Investigate Department EEO and program discrimination complaints.

(26) Make final decisions, after legal sufficiency reviews by the Office of the General Counsel, or both EEO and program discrimination complaints, except in those cases where the Assistant Secretary has participated in the events that gave rise to the matter.

(27) Order such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

(28) Provide liaison on EEO matters concerning complaints and appeals with the Department agencies and Department employees.

(29) Make final determinations, or enter into settlement agreements, after legal sufficiency reviews by the Office of the General Counsel, on discrimination complaints in conducted programs subject to the Equal Credit Opportunity Act. This delegation includes the authority to make compensatory damage awards whether pursuant to a final determination or in a settlement agreement under the authority of the Equal Credit Opportunity Act and the authority to obligate agency funds, including CCC and FCIC funds to satisfy such an award.

(30) Require corrective action on findings on discrimination on program complaints and recommend to the Secretary that relief be granted under 7 U.S.C. 6998(d), notwithstanding the finality of National Appeals Divisions decisions.

(31) Make final determinations in proceedings under part 15f of this title where review of an administrative law judge decision is undertaken.

(32) Provide civil rights and equal employment opportunity support services, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) Any other offices or agencies of the Department as may be agreed.

## Subpart D—Delegations of Authority to Other General Officers and Agency Heads

■ 14. Add to § 2.29 new paragraphs (a)(11)(vii), (a)(11)(viii) and (a)(11)(ix) to read as follows:

### § 2.29 Chief Economist.

(a) * * *

(11) * * *

(vii) Establish guidelines for use in the Federal procurement of biobased products in consultation with the Administrators of the Environmental Protection Agency and General Services and the Director, National Institute of Standards and Technology, and establish, in consultation with the Administrator of the Environmental Protection Agency, a voluntary ''USDA Certified Biobased Product'' labeling program (7 U.S.C. 8102).

(viii) Administer a competitive biodiesel fuel education grants program (7 U.S.C. 8104).

(ix) Implement a memorandum of understanding with the Secretary of Energy regarding cooperation in the application of hydrogen and fuel cell technology programs for rural communities and agricultural producers (7 U.S.C. 8107).

■ 15. Revise § 2.32 to read as follows:

### § 2.32 Director, Homeland Security Staff.

(a) The following delegations of authority are made by the Secretary to the Director, Homeland Security Staff:

(1) Administer the Department Emergency Preparedness Program. This includes the:

(i) Coordination of the delegations and assignments made to the Department under the Defense Production Act, 50 U.S.C. App. 2061, *et seq.,* and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.,* by Executive Orders 12148, ''Federal Emergency Management,'' and 12919, ''National Defense Industrial Resources Preparedness,'' and Executive Order 12656, November 18, 1988, ''Assignment of Emergency Preparedness Responsibilities,'' or any successor to these Executive Orders, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any other emergency.

(ii) Activation of the USDA incident management system and the Federal Response Plan responsibilities in the event of a major incident;

(iii) Establishment and oversight of a Departmentwide Incidence Command training program.

(iv) Development and promulgation of policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning both national and international; and guidance to USDA state and county emergency boards.

(v) Representation and liaison for the Department in contacts with other Federal entities and organizations, including the Office of Homeland Security (or successor organization), the Federal Emergency Management Agency, the National Security Council, the Office of Management and Budget, concerning matters of a national security, natural disaster, other emergencies, and agriculture-related international civil emergency planning and related activities, and as the primary USDA representative for anti-terrorism activities.

(vi) Development and submission of a coordinated budget request for homeland security.

(2) Serve as the USDA focal point to identify, receive, disseminate and store USDA intelligence requirements and convey information to the intelligence community.

(3) Serve as the primary point of contact for GAO and OIG audits of USDA homeland security activities.

(4) Coordinate interaction between Department agencies and private sector businesses and industries in emergency planning and public education under Department authorities delegated or assigned under the Federal Response Plan, the Defense Production Act 50 U.S.C. App. 2061, *et seq.,* and Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*

(5) Serve as the document classification authority for the Department.

(6) Provide staff support to the USDA Homeland Security Council.

(b) [Reserved]

■ 16. Add to § 2.34 paragraph (c) to read as follows:

### § 2.34 Director, National Appeals Division

* * * * *

(c) Prepare a report each year on the number of requests for equitable relief and the disposition of such requests for inclusion in the report of the Secretary to Congress on equitable relief requests made to the Department under farm and conservation programs (7 U.S.C. 7996(g)(2).

■ 17. Revise § 2.35 to read as follows:

**§ 2.35 Judicial Officer.**

(a) Pursuant to the Act of April 4, 1940, as amended (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. app.), the Secretary of Agriculture makes the following delegations of authority to the Judicial Officer. The Judicial Officer is authorized to:

(1) Act as final deciding officer in adjudicatory proceedings subject to 5 U.S.C. 556 and 557;

(2) Act as final deciding officer in adjudicatory proceedings which are or may be subject to the ''Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes'' set forth in part 1, subpart H, of this title;

(3) Act as final deciding officer in adjudicatory proceedings which are or may be subject to the ''Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act'' set forth in part 1, subpart I, of this title;

(4) Act as final deciding officer in adjudicatory proceedings subject to the ''Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986'' set forth in part 1, subpart L, of this title;

(5) Act as final deciding officer in adjudicatory proceedings subject to the ''Rules of Practice Governing Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*)'' set forth in part 1, subpart M, of this title;

(6) Act as final deciding officer in rate proceedings under the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181–229);

(7) Act as final deciding officer in reparation proceedings under statutes administered by the United States Department of Agriculture;

(8) Act as final deciding officer in appeals under section 63 of the Plant Variety Protection Act (7 U.S.C. 2443), and in reexamination proceedings under section 91 of the Plant Variety Protection Act, as amended (7 U.S.C.. 2501);

(9) Act as final deciding officer in adjudicatory proceedings under section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii); and

(10) Issue rules of practice applicable to proceedings conducted under section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii).

(b) The delegation of authority from the Secretary of Agriculture to the Judicial Officer in paragraph (a) of this section shall not be construed to limit the authority of the Judicial Officer to perform any functions, in addition to those identified in the Act of April 4, 1940, as amended (7 U.S.C. 450c–450g), which may be assigned by the Secretary of Agriculture to the Judicial Officer.

(c) As used in this section, the term *Judicial Officer* shall mean any person or persons so designated by the Secretary of Agriculture.

## Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

■ 18. Amend § 2.42 to revise paragraph (a)(12) and add paragraph (a)(45) through (a)(48) to read as follows:

**§ 2.42 Administrator, Farm Service Agency.**

(a) * * *

(12) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment,and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701, *et seq.*) and section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1) (except for the authority under section 3107(d) to designate federal agencies that is reserved to the President), and payment and related services with respect to export programs and barter operations.

* * * * *

(45) Administer all programs of the Commodity Credit Corporation that provide assistance with respect to the production of agricultural commodities, including disaster assistance and the domestic marketing of such commodities, except as may otherwise be reserved by the Under Secretary for Farm and Agricultural Services.

(46) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Administrator, Farm Service Agency:

(i) The equitable relief provisions of section 1613 (7 U.S.C. 7996).

(ii) The tracking of benefits under section 1614 (7 U.S.C. 7997).

(iii) The development of a plan and related report to coordinate land retirement and agricultural working land conservation programs under section 2005 (16 U.S.C. 3801 note).

(47) Administer programs for Apple Loans and Emergency Loans for Seed Producers under section 203(f) and 253, respectively, of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1421 note, Pub. L. 106–224).

(48) Administer evaluations of direct and guaranteed loan programs under section 5301 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1992 note).

* * * * *

■ 19. Amend § 2.43 to add paragraphs (a)(43) and (a)(44) to read as follows:

**§ 2.43 Administrator, Foreign Agricultural Service.**

(a) * * *

(43) Implement provisions of the Trade Act of 1974 regarding adjustment assistance for farmers. (19 U.S.C. 2401–2401g).

(44) Implement section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1), except as otherwise delegated in § 2.42(a)(12) and except for the authority under section 3107(d) to designate federal agencies that is reserved to the President.

* * * * *

## Subpart G—Delegations of Authority by the Under Secretary for Rural Development

■ 20. Amend § 2.47 to revise paragraph (a)(4) and add paragraph and (a)(15) to read as follows:

**§ 2.47 Administrator, Rural Utilities Service.**

(a) * * *

(4) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306 (7 U.S.C. 1926), related to water and waste facilities.

(ii) Section 306A (7 U.S.C. 1926a).

(iii) Section 306B (7 U.S.C. 1926b).

(iv) Section 306C (7 U.S.C. 1926c).

(v) Section 306D (7 U.S.C. 1926d).

(vii) Section 306E (7 U.S.C. 1926e).

(vii) Sections 309 (7 U.S.C. 1929 and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities.

(viii) Section 305 (7 U.S.C. 1926) relating to hazardous weather early warning systems.

(ix) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development.

(x) Section 310B(b) (7 U.S.C. 1932(b)).

(xi) Section 310B(i) (7 U.S.C. 1932(i)), relating to loans for business telecommunications partnerships.

(xii) Section 342 (7 U.S.C. 1013p).

(xiii) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Utilities Service activities.

(xiv) Section 379B (7 U.S.C. 2009;).

* * * * *

(15) Admnister the SEARCH Grants for Small Communities Program (7 U.S.C. 2009ee *et seq.*).

* * * * *

21. Amend § 2.48 to revise paragraph (a)(27) and add new paragraphs (a)(2)(vii), (a)(2)(viii), (a)(28), (a)(29) and (a)(30) to read as follows:

**§ 2.48 Administrator, Rural-Business Cooperative Service.**

(a) * * *

(2) * * *

(vii) Section 378 (7 U.S.C., 2008m) relating to the National Rural Development Partnership; and

(viii) Section 384A *et seq.* (7 U.S.C. 2009cc *et seq.*) relating to the Rural Business Investment program.

* * * * *

(27) Administer the assets of the Alternative Agricultural Research and Commercialization Corporation and the funds in the Alternative Agricultural Research and Commercialization Fund in accordance with section 6201 of the Farm Security and Rural Investment Act of 2000 (*see* note to 7 U.S.C. 5901 (repealed)).

(28) Administer the Value-Added Agricultural Product Market Development Grant program (note to 7 U.S.C. 1621).

(29) Administer the Agriculture Innovation Center Demonstration program (note to 7 U.S.C. 1621).

(30) Administer the Renewable Energy Systems and Energy Efficiency Improvements program (7 U.S.C. 8106).

* * * * *

■ 22. Add to § 2.49, paragraphs (a)(1)(iv) through (vi) and (a)(11), to read as follows:

**§ 2.49 Administrator, Rural Housing Service.**

(a) * * *

(1) * * *

(iv) Section 379 (7 U.S.C. 2008n) relating to the Rural Telework program.

(v) Section 379A (7 U.S.C. 2008o) relating to the Historic Barn Preservation program.

(vi) Section 379C (7 U.S.C. 2008q) relating to the Farm Workers Training Grant program.

* * * * *

(11) Administer the Rural Firefighters and Emergency Personnel Grant program (7 U.S.C. 2655).

## Subpart H—Delegations of Authority by the Under Secretary for Food Safety

■ 23. Add to § 2.53, paragraph (a)(9), to read as follows:

**§ 2.53 Administrator, Food Safety and Inspection Service.**

(a) * * *

(9) Conduct an education program regarding the availability and safety of processes and treatments that eliminate or substantially reduce the level of pathogens on meat, meat food products, poultry, and poultry products (21 U.S.C. 679b).

* * * * *

## Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

■ 24. Amend § 2.57 to revise paragraph (a)(1) and add paragraph (a)(14) to read as follows:

**§ 2.57 Administrator, Food and Nutrition Service.**

(a) * * *

(1) Administer the following legislation:

(i) The Food Stamp Act of 1977, as amended (7 U.S.C. 2011–2032).

(ii) Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1751–1769h), except procurement of agricultural commodities and other foods under section 6 thereof.

(iii) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790).

(iv) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note).

(v) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).

(vi) Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007).

* * * * *

(14) Administer those functions under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612) relating to the eligibility of aliens for benefits under the domestic food assistance programs.

* * * * *

## Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

■ 25. Amend § 2.61 to revise paragraphs (a)(4)(v), (a)(13), (a)(18), and (a)(25) and remove and reserve paragraph (a)(19) to read as follows:

**§ 2.61 Chief, Natural Resources Conservation Service.**

(a) * * *

(4) * * *

(v) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1010, including rehabilitation of water resource structural measures constructed under certain Department of Agriculture programs under 16 U.S.C. 1012, except for responsibilities assigned to the Rural Housing Service and the Forest Service.

* * * * *

(13) Administer natural resources conservation authorities, including authorities related to programs of the Commodity Credit Corporation that provide assistance with respect to natural resources conservation, under Title XII of the Food Security Act of 1985 (the Act), as amended (16 U.S.C. 3801 *et seq.*), including the following:

(i) Technical assistance related to the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(ii) Technical assistance related to the Conservation Reserve Program authorized by sections 1231–1235A of the Act (16 U.S.C. 3831–3835a);

(iii) The Wetlands Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237F of the Act (16 U.S.C. 3837–3837f) and the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act, Pub. L. 103–75;

(iv) The Conservation Security Program authorized by sections 1238–1238C (16 U.S.C. 3838–3838c);

(v) The Farmland Protection Program authorized by sections 1238H–1238I of the Act (16 U.S.C. 3838h–3838i);

(vi) The Farm Viability Program authorized by section 1238J of the Act (16 U.S.C. 3838j);

(vii) The Environmental Easement Program authorized by sections 1239–1239D of the Act (16 U.S.C. 3839–3839d);

(viii) The Environmental Quality Incentives Program authorized by sections 1240–1240I of the Act (16 U.S.C. 3839aa–3839aa–9);

(xix) The conservation of private grazing lands authorized by section 1240M of the Act (16 U.S.C. 3839bb);

(x) The Wildlife Habitat Incentives Program authorized by section 1240N of the Act (16 U.S.C. 3839bb–1);

(xi) The program for soil erosion and sedimentation control in the Great Lakes basin authorized by section 1240P of the Act (16 U.S.C. 3839bb–3);

(xii) The delivery of technical assistance under section 1242 of the Act (16 U.S.C. 3842), including the approval of persons or entities outside of USDA to provide technical services;

(xiii) The authority for partnerships and cooperation provided by section 1243 of the Act (16 U.S.C. 3843), except for responsibilities assigned to the Under Secretary for Farm and Foreign Agricultural Services; and

(xiv) The incentives for beginning farmers and ranchers and Indian tribes and the protection of certain proprietary information related to natural resources conservation programs as provided by section 1244 of the Act (16 U.S.C. 3844), except for responsibilities assigned to the Administrator, Farm Service Agency.

* * * * *

(18) Administer the agricultural management assistance provisions of section 524(b) of the Federal Crop Insurance Act, as amended (7 U.S.C. 1524(b)), except for responsibilities assigned to the Administrator, Risk Management Agency.

(19) [Removed and reserved]

* * * * *

(25) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Chief, Natural Resources and Environment:

(i) The equitable relief provisions of section 1613 (7 U.S.C. 7996);

(ii) The tracking of benefits under section 1614 (7 U.S.c. 7997); and

(iii) The development of a plan and related report to coordinate land retirement and agricultural working land conservation programs under section 2005 (16 U.S.C. 3801 note).

* * * * *

## Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

■ 26. Amend § 2.65 to revise paragraphs (a)(40) and (a)(104) to read as follows:

### § 2.65 Administrator, Agricultural Research Service.

(a) * * *

(40) Facilitate access, including through the National Agricultural Library, by research and extension professionals, farmers, and other interested persons in the United States to, and the use by those persons of, organic research conducted outside the United States (7 U.S.C. 5925d).

* * * * *

(104) Administer grants to consortia of land-grant colleges and universities to enhance the ability of the consortia to carry out multi-State research projects aimed at understanding and combating diseases of wheat, triticale, and barley caused by Fusarium graminearum and related fungi or Tilletia indica and related fungi (7 U.S.C. 7628).

* * * * *

■ 27. Amend § 2.66 as follows:

■ a. Remove and reserve paragraphs (a)(58), (a)(59), (a)(60), (a)(66) through (a)(71), (a)(75), (a)(77), (a)(87), (a)(94), (a)(103), and (a)(112);

■ b. Revise paragraphs (a)(9), (a)(10), (a)(20), (a)(39), (a)(51), (a)(102), and (a)(124); and

■ c. Add new paragraphs (a)(21), (a)(38), (a)(40), and (a)(131) through (a)(140) to read as follows:

### § 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(a) * * *

(9) Make grants and enter into contracts and other agreements for outreach and technical assistance to socially disadvantaged farmers and ranchers (7 U.S.C. 2279(a)(3)).

(10) Administer, in cooperation with land-grant colleges and universities where applicable, a rural development research and extension program, a small farm research and extension program, and a rural health and safety education program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

* * * * *

(20) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural research, extension, teaching, and development activities; administer a program of competitive grants for collaborative projects involving Federal scientists or scientists from colleges and universities working with scientists at international agricultural research centers in other nations focusing either on new technologies and programs for increasing the production of food and fiber or training scientists and a program of competitive grants to colleges and universities to strengthen United States economic competitiveness and to promote international market development; and establish a program in coordination with the Foreign Agricultural Service to place interns from United States colleges and universities at Foreign Agricultural Service field offices overseas (7 U.S.C. 3291, 3292b).

(21) Administer a program of competitive grants to colleges and universities and State cooperative institutions for the acquisition of special purpose scientific research equipment for use in the food and agricultural sciences (7 U.S.C. 3310a).

* * * * *

(38) Develop and implement a program to communicate with the public regarding the use of biotechnology in producing food for human consumption (7 U.S.C. 5921a).

(39) Administer a rural electronic commerce extension program through grants to regional rural development centers and competitive grants to land-grant colleges and universities and to colleges and universities (including community colleges) with agricultural or rural development programs (7 U.S.C. 5923).

(40) Conduct a research initiative known as the Agricultural Genome Initiative; and make grants or enter cooperative agreements on a competitive basis with individuals and organizations to carry out the Initiative (7 U.S.C. 5924).

* * * * *

(51) Administer a cooperative forestry program in accordance with the McIntire-Stennis Cooperative Forestry Act, and administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 582a–582a–8).

* * * * *

(58)–(60) [Removed and reserved]

* * * * *

(66)–(71) [Removed and reserved]

* * * * *

(75) [Removed and reserved]

* * * * *

(77) [Removed and reserved]

* * * * *

(87) [Removed and reserved]

* * * * *

(94) [Removed and reserved]

* * * * *

(102) Implement and administer the Community Food Projects Program and the Innovative Programs for Addressing Common Community Problems pursuant to the provisions of section 25 of the Food Stamp Act of 1977 (7 U.S.C. 2034).

(103) [Removed and reserved]

* * * * *

(112) [Removed and reserved]

* * * * *

(124) Administer an Initiative for Future Agriculture and Food Systems (7 U.S.C. 7621).

* * * * *

(131) Cooperate with other Federal agencies (including the National Science Foundation) in issuing joint requests for proposals, awarding grants, and administering grants under any

competitive agricultural research, education, or extension grant program (7 U.S.C. 3319b).

(132) Administer a program of competitive grants, establish education teams, and establish an online clearinghouse of curricula and training materials and programs, all for training, education, outreach, and technical assistance initiatives for the benefit of beginning farmers and ranchers (7 U.S.C. 3319f).

(133) Administer agricultural research, education, and extension activities (including through competitive grants), using any authority available to the Secretary, to reduce the vulnerability of the United States food and agricultural system to chemical or biological attack, to continue partnerships with institutions of higher education and other institutions to help form stable, long-term programs to enhance the biosecurity of the United States, to make competitive grants to universities and qualified research institutions for research on counterbioterrorism, and to counter or otherwise respond to chemical or biological attack (7 U.S.C. 3351).

(134) Administer a program of competitive grants to colleges and universities for expansion and security upgrades to enhance the security of agriculture against bioterrorism (7 U.S.C. 3352).

(135) Administer programs for distance education grants and resident instruction grants to eligible institutions in insular areas that have demonstrable capacity to carry out teaching and extension programs in the food and agricultural sciences (7 U.S.C. 3361–3363).

(136) Administer a program of cooperative research (including through competitive award of grants and cooperative agreements to colleges and universities) and extension projects on carbon cycling in soils and plants, the exchange of other greenhouse gases from agriculture, and the carbon sequestration benefits of conservation practices (7 U.S.C. 6711).

(137) Administer a program, in coordination with State veterinarians and other appropriate State animal health professionals, to conduct research, testing, and evaluation of programs for the control and management of Johne's disease in livestock (7 U.S.C. 7629).

(138) Administer a program of grants to the Girl Scouts of the United States of America, the Boy Scouts of America, the National 4–H Council, and the National FFA Organization to establish pilot projects to expand the programs carried out by the organizations in rural areas and small towns (7 U.S.C. 7630).

(139) Oversee implementation of the termination of Federal schedule A civil service appointments of State agricultural extension employees at land-grant colleges and universities (section 7220 of Pub. L. 107–171).

(140) Administer and direct a program of grants to the Food and Agricultural Policy Research Institute (section 10805 of Pub. L. 107–171).

* * * * *

■ 28. Amend § 2.67 to add paragraph (a)(12) and paragraph (a)(18) to read as follows:

**§ 2.67 Administrator, Economic Research Service**

(a) * * *

(12) Facilitate access by research and extension professionals, farmers, and other interested persons in the United States to, and the use by those persons of, organic research conducted outside the United States (7 U.S.C. 5925d).

* * * * *

(18) Include in each issuance of projections of net farm income an estimate of the net farm income earned by commercial producers in the United States that will in addition show the estimate of net farm income attributable to commercial producers of livestock, loan commodities, and agricultural commodities other than loan commodities (7 U.S.C. 7998).

* * * * *

■ 29. Amend § 2.68 to add paragraphs (a)(10) and (a)(11) to read as follows:

**§ 2.68 Administrator, National Agricultural Statistics Service**

(a) * * *

(10) Ensure that segregated data on the production and marketing of organic agricultural products is included in the ongoing baseline of data collection regarding agricultural production and marketing (7 U.S.C. 5925c).

(11) Administer a program of mandatory reporting for dairy products and substantially identical products (7 U.S.C. 1637a, 1638b).

* * * * *

## Subpart L—Delegations of Authority by the Chief Economist

■ 30. Add to § 2.73 new paragraphs (a)(8) and (a)(9) to read as follows:

**§ 2.73 Director, Office of Energy Policy and New Uses.**

(a) * * *

(8) Administer a competitive biodiesel fuel education grants program (7 U.S.C. 8104).

(9) Implement a memorandum of understanding with the Secretary of Energy regarding cooperation in the application of hydrogen and fuel cell technology programs for rural communities and agricultural producers (7 U.S.C. 8107).

* * * * *

## Subpart N—Delegations of Authority by the Under Secretary for Marketing and Regulatory Programs

■ 31. Revise the subpart heading to read as set forth above.

■ 32. Revise § 2.77 to read as follows:

**§ 2.77 Deputy Under Secretary for Marketing and Regulatory Programs.**

Pursuant to § 2.22(a), subject to reservations in § 2.22(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Marketing and Regulatory Programs to the Deputy Under Secretary for Marketing and Regulatory Programs, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Marketing and Regulatory Programs.

■ 33. Amend § 2.79 to revise the introductory text of paragraph (a) and add paragraphs (a)(8)(lxiii) through (a)(8)(lxvi) to read as follows:

**§ 2.79 Administrator, Agricultural Marketing Service.**

(a) *Delegations.* Pursuant to § 2.22(a)(1), (a)(5) and (a)(8), subject to reservations in § 2.22(b)(1), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Agricultural Marketing Service:

* * * * *

(8) * * *

(lxiii) Farmers' Market Promotion Program (7 U.S.C. 2005).

(lxiv) National Organic Certification Cost-Share Program (7 U.S.C. 6523).

(lxv) Exemption of Certified Organic Products from Assessment (7 U.S.C. 7401).

(lxvi) Country of Origin Labeling (7 U.S.C. 1638–1638(d)).

(lxvii) Hass Avocado Promotion, Research, and Consumer Information Act of 2000 (7 U.S.C. 7801–7813).

* * * * *

■ 34. Amend § 2.80 to revise the introductory text of paragraph (a) and paragraph (b) and add new paragraphs (a)(52), (a)(53), (a)(54), (a)(55), and (a)(56) to read as follows:

**§ 2.80 Administrator, Animal and Plant Health Inspection Service.**

(a) *Delegations.* Pursuant to § 2.22(a)(2) and (a)(6) through (a)(9), and subject to reservations in § 2.22(b)(2), the following delegations of authority are made by the Under Secretary for Marketing and Regulatory Programs to the Administrator, Animal and Plant Health Inspection Service: Exercise functions of the Secretary of Agriculture under the following authorities:

* * * * *

(52) Animal Health Protection Act (7 U.S.C. 8301–8317).

(53) Section 10504 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8318).

(54) Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e and 2279f).

(55) The responsibilities of the United States related to activities of the Office International des Epizooties.

(56) Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Title II, Subtitles B and C; of the Public Health Security and Bioterrorism Preparedness Response Act of 2002 (7 U.S.C. 8401 note, 8401, 8411)).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Marketing and Regulatory Programs: The authority to make determinations under 35 U.S.C. 156 as to whether an applicant acted with due diligence.

## Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

■ 35. Remove in § 2.85 paragraphs (a)(7) and (a)(8).

## Subpart P—Delegations of Authority by the Assistant Secretary for Administration

■ 36. Amend § 2.90 to revise the introductory text of paragraph (a) and to remove and reserve paragraph (a)(2) and revise paragraph (a)(8) to read as follows:

**§ 2.90 Director, Office of Outreach.**

(a) *Delegations.* Pursuant to § 2.24(a)(4), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Outreach:

* * * * *

(2) [Removed and reserved]

* * * * *

(8) Establish requirements and procedures for reporting agency outreach status and accomplishments, including Departmental reporting under the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program (7 U.S.C. 2279).

* * * * *

■ 37. Amend § 2.91 to revise the introductory text of paragraph (a), revise paragraph (a)(1), and add paragraphs (a)(7) and (a)(8) to read as follows:

**§ 2.91 Director, Office of Operations.**

(a) *Delegations.* Pursuant to § 2.24(a)(5) and (a)(9), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Operations:

(1) Provide services for Department headquarters in the Washington, DC metropolitan area and at emergency relocation sites and certain critical facilities specified by the Assistant Secretary for Administration in the following areas:

(i) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments.

(ii) Acquiring, storing, distributing, and disposing of forms.

(iii) Mail management and all related functions.

(iv) Occupational health services and related functions.

* * * * *

(7) *Related to compliance with environmental laws.* Take action pursuant to Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to comply with environmental pollution control laws with respect to facilities and activities under his or her authority, including, but not limited to, entering into inter-agency agreements, administrative consent orders, consent judgments, or other agreements with the appropriate Federal, State, interstate, or local agencies to achieve and maintain compliance with applicable pollution control standards.

(8) Manage the Department Emergency Operations Center and alternate facilities.

* * * * *

■ 38. Amend § 2.92 as follows:

■ a. Revise the introductory text of paragraph (a),

■ b. Revise paragraphs (a)(7), (a)(9)(xii), and (a)(9)(xiii),

■ c. Remove and reserve paragraph (a)(10)(xx), and

■ d. Add paragraphs (a)(24), (a)(25), and (a)(26) to read as follows:

**§ 2.92 Director, Office of Human Resources Management**

(a) *Delegations.* Pursuant to § 2.24 (a)(6) and (a)(12), and subject to reservations in § 2.24(b)(1), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Human Resources Management:

* * * * *

(7) Authorize and make final decisions on adverse actions except in those cases where the Assistant Secretary for Administration or the Director, Office of Human Resources Management, has participated.

* * * * *

(9) * * *

(xii) Authorize and make final decisions on adverse actions for positions in GS–1–15 or equivalent;

(xiii) Authorize and make final decisions on adverse actions for positions in the career Senior Executive Service or equivalent;

* * * * *

(10) * * *

(xx) [Removed and reserved]

* * * * *

(24) Oversee the Conflict Prevention and Resolution Center, the Director of which:

(i) Serves as the Department's Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.,* and provides leadership, direction and coordination for the Department's conflict prevention and resolution activities;

(ii) Provides ADR services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) Any other officer or agency of the Department as may be agreed.

(iii) Develops and issues standards for mediators and other ADR neutrals utilized by the Department.

(iv) Coordinates ADR activities throughout the Department; and

(v) Monitors Agency ADR programs and reports at least annually to the Secretary on the Department's ADR activities.

(25) Formulate and issue Department policy, standards, rules, and regulations relating to the Senior Scientific Research Service (7 U.S.C. 7657).

(26) Redelegate, as appropriate, any authority delegated under this section to general officers of the Department and heads of Departmental agencies.

* * * * *

■ 39. Amend § 2.93 as follows:

a. Revise the heading, the introductory text to paragraph (a), and paragraphs (a)(2)(i), (a)(11), (a)(12, (a)(17),

b. Remove and reserve paragraphs (a)(1)(vii), (a)(6), and (a)(9), and

c. Add paragraph (a)(18) to read as follows:

**§ 2.93 Director, Office of Procurement and Property Management.**

(a) *Delegations.* Pursuant to §§ 2.24(a)(7), (a)(8), (a)(9), and (a)(10), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Procurement and Property Management:

(1) * * *

(vii) [Removed and reserved]

* * * * *

(2) * * *

(i) The Director, Office of Procurement and Property Management, is designated as the Departmental Debarring Officer and authorized to perform the functions of 48 CFR part 9, subpart 9.4 related to procurement activities, except for commodity acquisitions on behalf of the Commodity Credit Corporation (7 CFR part 1407), with authority to redelegate suspension and debarment authority for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c);

* * * * *

(6) [Removed and reserved]

* * * * *

(9) [Removed and reserved]

* * * * *

(11) Issue regulations and directives to implement or supplement the Federal Acquisition Regulations (48 CFR chapters 1 and 4).

(12) Issue regulations and directives to implement or supplement the Federal Management Regulation (41 CFR part 102) and the Federal Property Management Regulations (41 CFR chapters 101).

* * * * *

(16) *Related to Emergency Preparedness.* Provide guidance to the development and administration of the Department Continuity of Operations Plan and to USDA participation in Continuity of Government Plan. This includes:

(i) Providing guidance and direction regarding continuity of operations to Departmental staff offices, mission areas, and agencies.

(ii) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations concerning matters of assigned responsibilities.

(iii) Overseeing Department continuity of operations, planning, and emergency relocation facilities to ensure that resources are in a constant state of readiness.

(17) *Related to energy and environmental management:* (i) Provide program leadership and coordination for USDA's energy conservation and energy efficiency activities pursuant to Executive Order 13123, Greening of the Government Through Efficient Energy Management.

(ii) Promulgate policies, standards, techniques, and procedures, and represent the Department, in prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR 1978 Comp., p. 243).

(iii) Review and approve exemptions for USDA contracts, subcontracts, grants, agreements, and loans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the Environmental Protection Agency (40 CFR 32.215(b)).

(iv) Provide program leadership and oversight for USDA compliance with applicable pollution control laws and executive orders, including Executive Order 13148, Greening of the Government Through Leadership in Environmental Management.

(v) Coordinate USDA waste prevention, recycling, and procurement, acquisition and use of recycled products and environmentally preferable products, including biobased products, and services, and serve as USDA Environmental Executive, pursuant to Executive Order 13101.

(vi) Serve as Departmental Administration Member and Executive Secretary of the USDA Hazardous Materials Policy Council.

(vii) Represent USDA in consulting or working with the Environmental Protection Agency (EPA), the Council on Environmental Quality, the Domestic Policy Council, and others to develop policies relating to hazardous materials management and Federal facilities compliance with applicable pollution control laws.

(viii) Monitor, review, evaluate, and oversee hazardous materials management program activities and compliance Department-wide.

(ix) Monitor, review, evaluate, and oversee USDA agency expenditures for hazardous materials management program accomplishments.

(x) Prepare for the USDA Hazardous Materials Policy Council the Hazardous Materials Management Program budget request to the Office of Management and Budget (OMB) and Congress, prepare accomplishment reports to Congress, OMB, and EPA, and take a role in the preparation of replies to Congressional inquires.

(xi) Represent USDA on the National Response Team on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, *et seq.*); the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*); Oil Pollution Act, as amended (33 U.S.C. 2701, *et seq.*); Executive Order 12580, 3 CFR 1987 Comp., p. 193; Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300.

(xii) Approve disbursements from the New World Mine Response and Restoration Account, approve the New World Mine Response and Restoration Plan, and make quarterly reports to Congress under Sections 502(d) and (f) of Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Public Law 105–83.

(xiii) Ensure that the Hazardous Materials Management Program Department-wide is accomplished with regard to, and in compliance with, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

(xiv) Take such action as may be necessary, with the affected agency head and with the concurrence of the General Counsel, including issuance of administrative orders and agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order 12580, as amended by Executive Order 13016.

(18) *Relating to personnel security and the safeguarding of national security information:*

(i) Direct and administer USDA's personnel security and public trust programs established pursuant to Executive Order 12968, Access to Classified Information (3 CFR 1995 Comp. pp 391–402) and 5 CFR part 731.

(ii) Manage the personnel security functions of the Department including programs for eligibility access determinations, obtaining security clearance for USDA employees, denial or revocation of access to national security information, and developing and promulgating policies training.

(iii) Direct and administer USDA's program under which information is

safeguard pursuant to Executive Order 12958, Classified National Security Information.

(iv) Establish Information Security (INFOSEC) policies and procedures for classifying, declassifying, safeguarding, and disposing of classified national security information and materials.

(v) Establish procedures under which authorized holders of information may challenge the classification of information believed to be improperly classified or unclassified.

(vi) Take corrective action for violations or infractions under section 5.7 par. (b), of Executive Order 12958.

(vii) Develop and maintain a secure facility for the receipt and safeguarding of classified material.

(viii) Coordinate security activities with the Chief Information Officer who has primary responsibility for PDD 63, Critical Infrastructure Assurance.

* * * * *

■ 40. Amend § 2.94 to remove paragraph (a)(5) and revise the introductory text of paragraph (a) to read as follows:

**§ 2.94 Director, Office of Planning and Coordination.**

(a) *Delegations.* Pursuant to § 2.24(a)(11), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Planning and Coordination:

* * * * *

■ 41. Add subpart R, consisting of § 2.300, to read as follows:

## Subpart R—Delegations of Authority by the Assistant Secretary for Civil Rights

■ 42. Redesignate § 2.89 as § 2.300 transfer it to Subpart R, and revise the introductory text of redesignated § 2.300(a) to read as follows:

**§ 2.300 Director, Office of Civil Rights.**

(a) Pursuant to § 2.25, the following delegations of authority are made by the Assistant Secretary for Civil Rights to the Director, Office of Civil Rights.

* * * * *

## PART 15—NONDISCRIMINATION

■ 1. The authority for Part 15 continues to read as follows:

**Authority:** 5 U.S.C. 301; 29 U.S.C. 794.

**§ 15.6 [Amended]**

■ 2. In § 15.6, remove the words ''Assistant Secretary for Administration'' and add, in their place, the words ''Assistant Secretary for Civil Rights.''

## PART 15f—ADJUDICATIONS UNDER SECTION 741

■ 1. The authority for Part 15f continues to read as follows:

**Authority:** 5 U.S.C. 301; section 101(a) of Pub. L. 105–277, 112 Stat. 2681; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

■ 2. Remove the definition of ASA in § 15f.4 and add, in its place, the definition of *ASCR*, to read as follows:

**§ 15f.4 What do certain words and phrases in these regulations mean?**

* * * * *

*ASCR* means the Assistant Secretary for Civil Rights.

* * * * *

■ 2. In addition to the amendment set forth above, in part 15f remove the word ''ASA'' and add, in its place, the word ''ASCR'' in the following places:

a. Section 15f.13(a).
b. Section 15f.16(a).
c. Section 15f.24(a).

## PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

■ 1. The authority citation for part 371 continues to read as follows:

**Authority:** 5 U.S.C. 301.

■ 2. Amend § 371.3 to revise the section heading and add new paragraphs (b)(2)(xii) and (b)(2)(xiii) to read as follows:

**§ 371.3 Plant Protection and Quarantine**

* * * * *

(b) * * *

(2) * * *

(xii) Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e and 2279f).

(xiii) title II, Subtitle B, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8401 not and 8401).

* * * * *

■ 3. Add to § 371.4 paragraphs (b)(3)(xxi), (b)(3)(xxii), (b)(3)(xxiii), and (b)(3)(xxiv) to read as follows:

**§ 371.4 Veterinary Services**

* * * * *

(b) * * *

(3) * * *

(xxi) Animal Health Protection Act (7 U.S.C. 8301–8317).

(xxii) Section 10504 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8318).

(xxiii) The responsibilities of the United States related to activities of the Office International des Epizooties.

(xxiv) Title II, Subtitles B and C, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8401 note, 8401, 8411).

* * * * *

For Part 1; Part 2, Subparts A, C, and D; and Parts 15 and 15f:

Dated: April 22, 2003.

**Ann M. Veneman,**

*Secretary of Agriculture.*

For Part 2, Subpart F:

Dated: April 29, 2003

**J.B. Penn,**

*Under Secretary for Farm and Foreign Agricultural Services.*

For Part 2, Subpart G:

Dated: April 22, 2003.

**Thomas C. Dorr,**

*Under Secretary for Rural Development.*

For Part 2, Subpart H:

Dated: April 22, 2003.

**Elsa Murano,**

*Under Secretary for Food Safety.*

For Part 2, Subpart I:

Dated: April 24, 2003.

**Eric M. Bost,**

*Under Secretary for Food, Nutrition, and Consumer Services.*

For Part 2, Subpart J:

Dated: April 22, 2003.

**Mark Rey,**

*Under Secretary for Natural Resources and Environment.*

For Part 2, Subpart K:

Dated: April 23, 2003.

**Joseph Jen,**

*Under Secretary for Research, Education, and Economics.*

For Part 2, Subpart L:

Dated: April 24, 2003.

**Keith Collins,**

*Chief Economist.*

For Part 2, Subpart N:

Dated: May 2, 2003.

**William Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

For Part 2, Subpart O:

Dated: April 28, 2003.

**Mary Waters,**

*Assistant Secretary for Congressional Relations.*

For Part 2, Subpart P:

Dated: April 29, 2003.

**Lou Gallegos,**

*Assistant Secretary for Administration.*

For Part 2, Subpart R:

Dated: April 30, 2003.

**Vernon B. Parker,**

*Assistant Secretary for Civil Rights.*

For Part 371:

Dated: May 1, 2003.

**Bobby Accord,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 03–12142 Filed 5–19–03; 8:45 am]

**BILLING CODE 3410–01–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–118–AD; Amendment 39–13149; AD 2003–10–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes. This action requires a detailed inspection for clearance and chafing of the entire length of the hydraulic lines located within the engine pylons, and follow-on/corrective actions, as applicable. This action also requires a revision of the maintenance manual to ensure that the clamps that hold the hydraulic lines are in their initial position during normal maintenance, and that the position is identified with a yellow paint line. This action is necessary to prevent chafing and consequent leakage of the hydraulic lines located within the No. 1 and No. 3 engine pylons, which can result in failure of the No. 1 and No. 2 hydraulic systems, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 4, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 19, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain ''Docket No. 2003–NM–118–AD'' in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Dassault Falcon Jet, PO Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Dassault Model Mystere-Falcon 50 series airplanes. The DGAC advises that since September 2002, there have been four separate reports of interference and consequent chafing on the hydraulic lines located within the No. 1 and No. 3 engine pylons. The interference and consequent chafing were discovered during scheduled maintenance. In a recent occurrence (April 9, 2003), the No. 1 hydraulic system failed due to leakage of the hydraulic line where chafing had worn through the hydraulic line. The No. 1 and No. 3 engine pylon installations are symmetrical. Subsequent investigation of the No. 3 engine pylon revealed that the hydraulic lines of the No. 2 hydraulic system were also chafed severely. Such chafing and consequent leakage of the hydraulic lines located within the No. 1 and No. 3 engine pylons, if not corrected, can result in failure of the No. 1 and No. 2 hydraulic systems, and consequent reduced controllability of the airplane.

### Explanation of Relevant Service Information

Dassault has issued Service Bulletin F50–A370, dated May 6, 2003, which describes procedures for a detailed inspection for clearance and chafing of the entire length of the hydraulic lines located within the engine pylons, and follow-on/corrective actions, as applicable. The follow-on actions include fastening the hydraulic clamps, ensuring proper clearance between the hydraulic lines and adjacent structure, and using yellow paint to mark the location of the clamps installed on the hydraulic lines. The corrective actions include inspecting for discrepancies (*i.e.*, evidence of contact, chafing, or abrasion) between the hydraulic lines, measuring the wear depth, and replacing the hydraulic line with a new hydraulic line, as applicable.

Dassault has issued Falcon 50 Maintenance Manual Temporary Revision 37, dated May 2003, which describes procedures for ensuring that the clamps that hold the hydraulic lines are reinstalled in their initial position during normal maintenance, and that the position is identified with a yellow paint line. Accomplishment of the actions specified in the service bulletin and the maintenance manual temporary revision are intended to adequately address the identified unsafe condition.

The DGAC classified this service bulletin and maintenance manual temporary revision as mandatory and issued French telegraphic airworthiness directive T2003–190(B), dated May 6, 2003, to ensure the continued airworthiness of these airplanes in France.

### FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent chafing and consequent leakage of the hydraulic lines located within the No. 1 and No. 3 engine pylons, which can result in failure of the No. 1 and No. 2 hydraulic systems, and consequent reduced controllability of the airplane. This AD requires a detailed inspection

for clearance and chafing of the entire length of the hydraulic lines within the pylons, and follow-on/corrective actions, as applicable. This AD also requires a revision of the maintenance manual to ensure that the clamps that hold the hydraulic lines are reinstalled in their initial position during normal maintenance, and that the position is identified with a yellow paint line. The actions are required to be accomplished in accordance with the service bulletin and maintenance manual temporary revision described previously.

**Difference Between This AD and French Airworthiness Directive**

Operators should note that the French telegraphic airworthiness directive specifies that the required actions be accomplished within the next 3 flights from the date of receipt of the French telegraphic airworthiness directive. The compliance time for this AD is within 7 days of the effective date of this AD.

We have determined that the identified unsafe condition is not a catastrophic event based on the following information:

- There is no indication that two hydraulic systems will fail simultaneously. The event that occurred on April 9, 2003, was a single system failure.
- The Falcon 50 Airplane Flight Manual contains procedures for single and dual hydraulic systems failure.
- Model Mystere-Falcon 50 series airplanes are certified for manual reversion of the flight control system with the loss of the No. 1 and No. 2 hydraulic systems.
- Model Mystere-Falcon 50 series airplanes have an electric auxiliary hydraulic system in the event that No. 1 and No. 2 hydraulic systems fail.

In light of all of these factors, we find a 7-day compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

**Changes to 14 CFR Part 39/Effect on the AD**

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

**Determination of Rule's Effective Date**

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

**Comments Invited**

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–118–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2003–10–04 Dassault Aviation:** Amendment 39–13149. Docket 2003–NM–118–AD.

*Applicability:* Model Mystere-Falcon 50 series airplanes having serial numbers 2 through 329 inclusive, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent chafing and consequent leakage of the hydraulic lines located within the No. 1 and No. 3 engine pylons, which can result in failure of the No. 1 and No. 2 hydraulic systems, and consequent reduced

controllability of the airplane, accomplish the following:

**Service Information**

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Dassault Service Bulletin F50–A370, dated May 6, 2003.

(2) Although the service bulletin referenced in this AD specifies to submit inspection results to the manufacturer, this AD does not include such a requirement.

**Inspection**

(b) Within 7 days after the effective date of this AD, do a detailed inspection of the entire length of the hydraulic lines located within the No. 1 and No. 3 engine pylons for clearance, per paragraph 2.C.(2)(b) of the service bulletin.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

**Proper Clearance**

(c) If the clearance of both hydraulic lines is found within the limits specified in the service bulletin during the inspection required by paragraph (b) of this AD, do the actions specified in paragraph (e) of this AD.

**Incorrect Clearance**

(d) If the clearance of any hydraulic line is found outside the limits specified in the service bulletin during the inspection required by paragraph (b) of this AD, before further flight, do a detailed inspection for discrepancies (*i.e.*, evidence of contact, chafing, or abrasion) between the hydraulic lines, per the service bulletin.

(1) If no discrepancy is detected, do the actions specified in paragraph (e) of this AD.

(2) If any discrepancy is detected, before further flight, measure the wear depth per the service bulletin.

(i) If the measurement is less than 0.004-inch (0.10 millimeter (mm)), no further action is required by this paragraph.

(ii) If the measurement is greater than or equal to 0.004-inch (0.10 mm), at the applicable time specifed in Figure 1, 2, or 3 of the service bulletin following the inspection required by paragraph (d) of this AD, replace the hydraulic line with a new hydraulic line per the service bulletin. The term ''flights,'' as used in Figures 1, 2, and 3 of the service bulletin, means ''flight cycles'' for this AD.

**Fastening Lines, Ensuring Proper Clearance, and Marking Location of Clamps**

(e) Before further flight following any inspection or replacement required by this AD, do the actions specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD per the service bulletin.

(1) Using clamps, screws, and nuts, fasten the hydraulic line(s) as indicated in Figure 4 of the service bulletin.

(2) Ensure proper clearance between the hydraulic line(s) and adjacent structure as indicated in paragraph 2.C.(2)(b) of the service bulletin.

(3) Using yellow paint, mark the location of the clamps installed on the hydraulic line(s).

**Revision to Maintenance Manual**

(f) Within 7 days after the effective date of this AD, revise the Dassault Falcon 50 Maintenance Manual by inserting a copy of Dassault Falcon 50 Maintenance Manual Temporary Revision 37, dated May 2003.

**Alternative Methods of Compliance**

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

**Incorporation by Reference**

(h) The actions shall be done per Dassault Service Bulletin F50–A370, dated May 6, 2003; and Dassault Falcon 50 Maintenance Manual Temporary Revision 37, dated May 2003; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, PO Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 2:** The subject of this AD is addressed in French telegraphic airworthiness directive T2003–190(B), dated May 6, 2003.

**Effective Date**

(i) This amendment becomes effective on June 4, 2003.

Issued in Renton, Washington, on May 9, 2003.

**Vi L. Lipski,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 03–12110 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF DEFENSE

## Office of the Secretary

## 32 CFR Part 3

**RIN 0790–AH01**

## Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the Department's audit policy for prototype projects that use ''other transaction'' authority. Representatives of the military departments, Defense agencies and other DoD activities, have agreed on a final rule that amends the proposed rule as a result of comments received.

**EFFECTIVE DATES:** This final rule will become effective on June 19, 2003. This final rule will become effective for new solicitations issued on June 19, 2003, and for any issued thereafter. This final rule may be used for new prototype awards that result from solicitations issued prior to June 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** David Capitano, (703) 847–7486.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, 107 Stat. 1547, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as ''other transaction'' agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to ''other transactions'' for prototype projects.

Part 3 to 32 CFR was established to codify policy pertaining to prototype ''other transactions'' that have a significant impact on the public and are subject to rulemaking. Additional guidance on prototype ''other transactions'' directed at Government officials can be found at the Defense Procurement Web site at: *http://www.osd.dp.mil.*

A proposed rule was published in the **Federal Register** (66 FR 58422–58425) for public comment on November 21, 2001. A notice of public meeting was published in the **Federal Register** on March 4, 2002 (67 FR 9632), and held on March 27, 2002. The proposed rule addressed conditions on use of ''other transactions'' for prototype projects, the nontraditional Defense contractor definition and audit policy. Comments on the proposed rule were received from five respondents and approximately 50 representatives of Government and industry attended the public meeting. The majority of the written comments

and discussion at the public meeting focused on the audit policy and are addressed in this final rule. The following summarizes the comments regarding audit policy and the disposition.

The following is a summary of the public input and the DoD response thereto (the source of the input is annotated after each comment):

**A. General**

1. *Public Comment:* The policy will discourage nontraditional Defense contractors from doing business with DoD (written public comments—five commenters).

*DoD Response:* A key concept of our form of government is accountability for its resources. DoD recognizes the balance that must be achieved between encouraging nontraditional contractors to do business with the DoD and the key concept of accountability for public funds. DoD believes there are certain instances when the government, either through use of an Independent Public Accountant (IPA) or a government employee, must have access to the awardee's books and records. However, in response to this and other comments, a number of revisions have been made to the proposed rule to reduce the potential for discouraging nontraditional Defense contractors. These revisions include raising the mandatory applicability requirements to $5 million per cost-type agreement, providing for a deviation from the mandatory applicability requirements for agreements in excess of $5 million, specifying instances in which the government could have no direct access to the contractor's books and records, and specifying that the government will make copies of IPA work papers when there is evidence that the audit has not been properly performed.

2. *Public Comment:* The value of the expanded policy and oversight is questionable (written public comment—one commenter).

*DoD Response:* DoD believes there is value in having an access to records policy that properly balances the need to encourage contractor participation with the need to obtain access to records necessary to ensure compliance with the terms of the agreement. However, DoD recognizes that the proposed rule needed to be revised to provide more flexibility towards achieving this balance.

3. *Public Comment:* Balance the need for audit access with the possible loss of access to technology (public meeting).

*DoD Response:* DoD agrees there must be an appropriate balance between the need to access new technologies and the level of access required to assure compliance with the terms of the agreement. DoD believes the final rule achieves this appropriate balance.

4. *Public Comment:* Review the language throughout the rule to ensure consistency of terms (public meeting).

*DoD Response:* DoD has reviewed the terms in the final rule to ensure consistency.

5. *Public Comment:* Revise the tone and verbiage of the proposed rule to reduce the perception of intrusion (public meeting).

*DoD Response:* DoD believes the final rule reduces the perception of intrusion noted at the public meeting. For example, the final rule states that the purpose of the government's review of an IPA's work papers is to verify compliance with Generally Accepted Government Auditing Standards (GAGAS). The rule also states that the government has no direct access to awardee records for nontraditional Defense contractors that refuse to accept government access. Another example is the language that provides for the government to make copies of audit work papers only if the audit has not been performed in accordance with GAGAS. Finally, the length and extent of audit access language specifies that access should be provided only to the extent needed to verify the actual costs or statutory cost share.

**B. Definitions**

1. *Public Comment:* Definition of ''Key Participant'' should be clarified for applicability to subawardees and their segments (written public comments—two commenters).

*DoD Response:* Revisions to the proposed rule have eliminated the need for the term ''key participant'' in the final rule.

2. *Public Comment:* Delete or define terms ''subordinate element'' and ''awardee'' (written public comments—two commenters).

*DoD Response:* Revisions to the proposed rule have eliminated the need for the term ''subordinate'' in the final rule. The term ''awardee'' was defined in the final rule issued on August 27, 2002 (67 FR 54955), regarding conditions for use.

3. *Public Comment:* Define ''Qualified Independent Public Accountant'' (written public comment—one commenter).

*DoD Response:* The final rule provides a definition of a ''Qualified Independent Public Accountant.''

**C. Statutory Basis**

*Public Comment:* Withdraw audit policy and clauses in their entirety because they are not required or implied by statute, rule, or regulation. The audit policy is not supported by legislative direction and not tailored to implement changes in 2000 or 2001 DoD Authorization Acts. The audit policy should incorporate only those provisions in section 803 of the FY 2000 DoD Authorization Act (written public comments—two commenters).

*DoD Response:* DoD does not believe the policy should be withdrawn. DoD believes that issuance of this final rule is consistent with the statutory requirements for the use of other transactions. The statutory authority for other transactions specifically requires, at 10 U.S.C. 2371, that the Secretary of Defense '' * * * shall prescribe regulations to carry out this section.'' DoD believes that this access to records policy is consistent with that statutory requirement.

**D. Flexibility**

1. *Public Comment:* Replace audit policy with a general statement such as ''If the Agreements Officer determines that an audit right is required, the coverage, length and extent shall be mutually agreed to by the parties. The audit shall be performed by an independent auditor that is mutually acceptable to the parties, and all audit expenses shall be reimbursed by the government'' (written public comment—one commenter).

*DoD Response:* For agreements that are less than $5 million, DoD agrees that general language providing the Contracting Officer with flexibility in negotiating the coverage, length, and extent of access is appropriate. DoD believes that, for cost-type agreements in excess of $5 million, more specific policy is necessary. However, the final rule provides flexibility to deviate from the specific policy when supported by the particular facts and circumstances.

2. *Public Comment:* Rely on awardee's internal auditors, certification of accounting procedures and documentation, and if necessary a tailored audit clause providing limited access for independent auditor (written public comment—one commenter).

*DoD Response:* DoD does not believe it is sufficient to rely on an awardee's internal auditors when cost-type agreements provide for government payments that exceed $5 million. DoD agrees that access is limited to those records that are needed to verify the established cost-share, actual costs or reporting used as the basis for payments.

3. *Public Comment:* Limit audits to post-verification of cost sharing only. Costs incurred should not be subject to

audit other than GAO (written public comments—three commenters).

*DoD Response:* DoD believes the government should not preclude reviews when payments are based on amounts generated from awardee's financial or cost records. The government needs to have some reasonable assurance regarding the appropriateness of those amounts. DoD believes the final rule provides such reasonable assurance while also providing appropriate flexibility in its application.

4. *Public Comment:* Audits for other than cost sharing should apply only if there is reason to believe an impropriety has occurred (written public comment—one commenter).

*DoD Response:* DoD believes the government should not limit reviews of actual costs incurred to cases where there is a reason to believe an impropriety has occurred. When cost-type agreements provide for government payments that exceed $5 million, the government needs to have some reasonable assurance regarding the appropriateness of those amounts. DoD believes the final rule provides such reasonable assurance while also providing appropriate flexibility in its application.

**E. Applicability**

1. *Public Comment:* Need to establish a threshold for applicability to prime recipients (written public comment—one commenter).

*DoD Response:* DoD agrees that a threshold for mandatory application of the policy is needed. The final rule establishes that threshold at $5 million per cost-type agreement. DoD believes this is an appropriate threshold because it will cover a majority of the dollars while exempting a majority of the agreements from mandatory application of the policy. Using data from the past eight years, it is anticipated that this threshold will provide the government with access to records for 89% of all government dollar under cost-type agreements, while also exempting 78% of those agreements from mandatory application of the policy.

2. *Public Comment:* Consider whether the language regarding ''payments generated from financial records'' could be misconstrued and applied too broadly. Examples of when the language would and would not apply should be considered (public meeting).

*DoD Response:* The language ''payments generated from financial records'' has been included in the final rule within the definition of a cost-type other transaction. To reduce potential misunderstanding or inappropriate application, the final rule includes examples of what constitutes a cost-type agreement.

3. *Public Comment:* Consider providing the Agreements Officer more flexibility in the application of the audit access clause (public meeting).

*DoD Response:* The final rule provides the Agreements Officer with the flexibility to negotiate the length and extent of access for any agreements that are less than $5 million. It also provides for the ability to deviate from some or all of the specific access requirements for cost-type agreements in excess of $5 million when such deviation is adequately supported by the particular facts and circumstances. The Agreements Officer should consult with the cognizant auditor to ensure that the benefits of such a deviation outweigh any increased risks to the Government.

4. *Public Comment:* Consider addressing the circumstances where a single agreement has both cost-based and fixed-price portions (public meeting).

*DoD Response:* DoD believes the examples of a cost-type agreement included in the proposed rule provides sufficient guidance for use by Agreements Officers in determining proper application of the policy to those unique circumstances in which an agreement has both cost-type and fixed-price portions.

5. *Public Comment:* Consider using different thresholds for nontraditional vs. traditional contractors (public meeting).

*DoD Response:* DoD considered using different thresholds for nontraditional and traditional contractors, but believes such an application would result in unnecessary complexity. DoD believes requiring application of the policy to all cost-type agreements in excess of $5 million is a more desirable approach because (1) it is anticipated to include a majority of the Government dollars on cost-type agreements while also exempting most of the agreements from mandatory application, and (2) it provides for the same threshold as the Comptroller General access, thereby providing a simple unified threshold for applying the two requirements.

6. *Public Comment:* Make the application of the audit policy at the discretion of the Agreements Officer regardless of the dollar amount of the agreement (public meeting).

*DoD Response:* DoD believes it is desirable to provide some specific policy for access to records when agreements exceed $5 million. However, DoD recognizes the need for an Agreements Officer to be able to exercise good business judgment. Under the final rule, for agreements that are less than $5 million, application of the audit policy is solely at the discretion of the Agreements Officer. In addition, for cost-type agreements in excess of $5 million, the final rule provides for a deviation from application of the policy if supported by the particular facts and circumstances.

7. *Public Comment:* Make the application of the audit policy mandatory regardless of the dollar amount of the agreement (public meeting).

*DoD Response:* DoD established a threshold that minimizes its risk. We did so to encourage participation by non traditional contractors. DoD believes that, for agreements that are less than $5 million, the Agreements Officer should have the flexibility to negotiate audit access to records based on their assessment of risk of the particular agreement.

8. *Public Comment:* Apply the audit threshold requirements at $5 million per agreement. This is the same as the GAO access requirements and the trigger for Earned Value Management (public meeting).

*DoD Response:* DoD agrees that this threshold is appropriate for mandatory application of the policy. In addition to being the same as the GAO access requirements (which simplifies application), DoD also believes that threshold, with its accompanying provisions for deviation, properly balances the need for access to records with the need to encourage contractor participation.

9. *Public Comment:* Consider using a trigger threshold requirement such as that used in applying the Cost Accounting Standards (public meeting).

*DoD Response:* DoD considered using a trigger concept, but believes such a concept would be unnecessarily complex. The $5 million threshold per cost-type agreement is a simplified approach that achieves the proper balance between the need for access to records and the need to encourage contractor participation.

10. *Public Comment:* The rule should not apply to nontraditional contractors (written public comment—one commenter).

*DoD Response:* DoD believes the final rule properly balances the need to access records with the concerns of nontraditional Defense contractors. The final rule provides for application of the policy for cost-type agreements in excess of $5 million. It is anticipated, based on past history, that this will exempt about 78% of the agreements. For the remaining 22%, the final rule

provides for a deviation when supported by the particular facts and circumstances. In those remaining instances where the access requirements are applied to nontraditional Defense contractors, the rule provides for use of an Independent Public Accountant if the nontraditional Defense contractor refuses Government access to its records.

11. *Public Comment:* The rule should state that it does not apply to existing agreements (written public comment—one commenter).

*DoD Response:* The final rule specifies the Other Transactions to which the policy applies, which does not include existing agreements.

**F. Use of an Independent Public Accountant (IPA)**

1. *Public Comment:* Use of an IPA will discourage nontraditional contractors because of the need for accounting systems to fully document costs and government access to IPA work papers that include company proprietary information (written public comments—two commenters).

*DoD Response:* DoD believes an awardee should maintain an accounting system that adequately supports the amounts used as the basis for payment regardless of whether the Government has access to the awardee's records. An awardee that enters into a cost-type agreement should have some sort of accounting system that adequately supports those amounts. In regard to company proprietary information, the final rule addresses this concern by limiting the government's right to make copies of the IPA's work papers to instances where there is evidence the audit has not been performed in accordance with GAGAS.

2. *Public Comment:* Delete government access to IPA work papers to protect propriety information of awardees/participants (written public comments—two commenters).

*DoD Response:* DoD believes it is important for the government to have access to IPA work papers to assure the audit has been performed in accordance with GAGAS. However, in recognition of the concern expressed by the commenter, the final rule limits the government's right to make copies of the IPA's work papers to instances where there is evidence the audit has not been performed in accordance with those standards.

3. *Public Comment:* The statements ''Use amounts generated from the awardee's financial or cost records as the basis for payment'' and ''direct access to sufficient records to ensure full accountability for all government funding'' are too broad and too vague. Audit access should be for very limited with focused purposes (written public comment—one commenter).

*DoD Response:* The final rule includes specific examples of a cost-type agreements which is defined as agreements where payments are based on amounts generated from the awardee's financial or cost records or that require at least one third of the total costs to be provided by non-Federal parties pursuant to statute. The statement ''direct access to sufficient records to ensure full accountability for all government funding'' has been replaced by a more focused requirement that the government have access to directly pertinent records ''needed to verify the actual costs or reporting used as the basis of payment or to verify statutorily required cost share under the agreement.''

4. *Public Comment:* Define GAGAS (written public comment—one commenter).

*DoD Response:* The final rule includes a description of Generally Accepted Government Auditing Standards and where those standards can be found.

5. *Public Comment:* The rule should require the agreement to specify the percentage of payments that may be withheld when an audit by an IPA is not adequately performed (written public comment—one commenter).

*DoD Response:* The final rule states that the Agreements Officer has the right to ''withhold or disallow a specified percentage of costs until the audit is completed satisfactorily. The specified percentage should be sufficient to enhance performance or corrective action while also not being unfairly punitive.''

6. *Public Comment:* Change ''should'' to ''shall'' in statement that ''Agreement Officer should grant approval to use an IPA when participant is not performing contract subject to Cost Principles/CAS and refuses to accept award if government has access'' (written public comment—one commenter).

*DoD Response:* The final rule states that the access to records clause for business units not performing contracts subject to the Cost Principles/CAS ''must provide for the use of a qualified IPA if such a business unit will not accept the agreement if the government has access to the business unit's records.''

7. *Public Comment:* Sample audit clause should revise ''The audit will be conducted by an IPA'' to ''The audit will be conducted by a mutually acceptable IPA at government expense'' (written public comment—one commenter).

*DoD Response:* To reduce the complexity of the rule and assure maximum flexibility for the Agreements Officer, the final rule deletes all of the sample audit clauses. Sample audit clauses intended to serve as a guide can be found at *http://www.osd.mil/dp* (under the ''Other Transactions'' Special Interest Item in ''Questions and Answers''). These samples may be modified as necessary to address the particular facts and circumstances of each agreement.

8. *Public Comment:* Add language stating that the purpose of the audit of an IPA's work papers is to verify compliance with GAGAS (public meeting).

*DoD Response:* The final rule states that the government will have access to the IPA's audit reports and working papers to ensure that the IPA has performed the audit in accordance with GAGAS.

9. *Public Comment:* Eliminate the need to access an IPA's work papers and rely on AICPA standards and public accounting peer reviews (public meeting).

*DoD Response:* DoD does not believe the AICPA standards and peer reviews provide adequate assurance that the audit of the other transaction has been performed in accordance with GAGAS because (a) GAGAS has some requirements that are not included in the AICPA standards, and (b) public accounting peer reviews focus on financial statement reviews and compliance with GAAS (as opposed to government financial payment reviews and compliance with GAGAS).

10. *Public Comment:* Require that IPA's comply with Generally Accepted Auditing Standards (GAAS) instead of GAGAS (public meeting).

*DoD Response:* The requirement to comply with GAGAS is a statutory requirement that cannot be waived by DoD. The Inspector General Act of 1978 (as amended) requires that audit work of Federal organizations, programs, activities, and functions comply with GAGAS.

11. *Public Comment:* Add language stating that, when an IPA's report is not adequate, an Agreements Officer should consider terminating an agreement only if it is impractical to withhold monies or suspend performance until the audit is satisfactorily performed (public meeting).

*DoD Response:* The final rule states that the Agreements Officer may terminate the agreement only if it is not practical to either (a) withhold monies, or (b) suspend performance until the audit is completed satisfactorily.

**G. DoDIG Access**

*Public Comment:* Delete 3.7(f)(2) that states if Agreements Officer gets access, DoDIG also gets access. This is not supported by statute. The only audit access in section 804 of Public Law 106–398 is for GAO, not DoDIG (written public comment—two commenters).

*DoD Response:* While section 804 of Public Law 106–398 does not provide for DoDIG access, such access is provided for in the Inspector General Act (Public Law 95–452). Public Law 95–452 provides that the Inspector General shall have access to the same records as the agency (DoD) and its employees (*e.g.*, the Agreements Officer). Thus, in accordance with this statute, if an agreement gives the Agreements Officer or another DoD component official access to a business unit's records, the DoDIG is granted the same access to those records.

**H. Audit Performance**

1. *Public Comment:* Delete the word ''normally'' from ''Audits normally will be performed only when Agreements Officer determines it is necessary to verify the awardee's compliance with the terms of the agreement'' (written public comment—one commenter).

*DoD Response:* The final rule deletes the word ''normally.'' The final rule states that ''Audits will be performed when the Agreements Officer determines it is necessary to verify statutory cost share or to verify amounts generated from financial or cost records that will be used as the basis for payment or adjustment of payment.''

2. *Public Comment:* Consider adding a ''problem statement'' describing what the policy is intending to correct (public meeting).

*DoD Response:* DoD does not believe it adds value to include a ''problem statement'' in the final rule. However, in response to the public comment, DoD notes that in developing the proposed and final rule, DoD has considered the ''problem'' to be the extent of access to records required by the government on cost-type agreements. The goal is to achieve an appropriate balance between the need to access new technologies and the level of access required to assure compliance with the terms of the agreement.

3. *Public Comment:* Consider permitting reviews of records at the awardee facility only, *i.e.*, the government would be precluded from removing records from the contractor's facility (public meeting).

*DoD Response:* DoD does not believe it is necessary to limit access to records at the awardee facility. However, DoD recognizes the concern expressed at the public meeting. For traditional contractors, the final rule does not provide any more access than the government currently has under procurement contracts with those contractors. For nontraditional Defense contractors, the rule provides for the use of an IPA if the nontraditional Defense contractor refuses to grant access to the government. In those instances, the government has no direct access to the nontraditional Defense contractors' books and records, and can only make copies of the IPA's work papers if there is evidence the audit was not performed in accordance with GAGAS.

**I. Flowdown to Subawardees/ Subagreements**

1. *Public Comment:* Revise flow down requirements because they appear to be nonnegotiable (written public comment—one commenter).

*DoD Response:* The final rule provides for flexibility in negotiating flow down requirements for subagreements that are less than $5 million. For cost-type subagreements that are in excess of $5 million, a deviation from the flow down requirements is permitted when supported by the particular facts and circumstances. Note, that Single Audit Act requirements apply to subawardees/ subagreements where appropriate.

2. *Public Comment:* The threshold of $300,000 for flow down to key participants is unusually low. Recommend using the $500,000 in legislation for traditional contractors or the $5 million used for GAO access (written public comments—two commenters).

*DoD Response:* DoD agrees that the $300,000 threshold in the proposed rule was too low. The final rule establishes a subagreement threshold of $5 million.

3. *Public Comment:* Delete the mandatory clauses for subagreements and instead make the awardee responsible for providing sufficient support for subawardee costs (public meeting).

*DoD Response:* The final rule deletes the requirement to apply the policy for subagreements that are less than $5 million. For cost-type subagreements that are in excess of $5 million, deviation from application of the policy is permitted when supported by the particular facts and circumstances.

4. *Public Comment:* The flow down requirements will discourage technology rich subcontractors from participating in other transactions (written public comment—one commenter).

*DoD Response:* DoD has strived to balance the potential discouragement of technology rich subcontractors from the need to assure compliance with the terms of the agreement. DoD believes this balance has been achieved in the final rule because (a) application of the policy is not required for subagreements that are $5 million or less, and (b) deviation from the policy is permitted for subagreements that are in excess of $5 million if warranted by the particular facts and circumstances.

**J. Sample Audit Clauses**

1. *Public Comment:* Sample audit clauses should revise ''awardee'' to ''business unit of the awardee'', and ''awardee's records'' to ''directly pertinent records of those business units of the awardee performing the work under the OT agreement'' (written public comment—one commenter).

*DoD Response:* DoD has deleted the sample clauses from the final rule because they add unnecessary complexity and could serve to reduce the flexibility of the Agreements Officer by becoming quasi-standard and/or quasi-required clauses. Sample clauses maintained at *http://www.osd.mil/dp* (under the ''Other Transactions'' Special Interest Item in ''Questions and Answers'') that are intended to serve as a guide do clarify access is to the specified business unit.

2. *Public Comment:* Consider adding language to the audit access clause that states when it applies (public meeting).

*DoD Response:* The final rule does provide specific language as to when a DoD access to records clause is applicable.

**K. Traditional vs. Non-Traditional Contractor**

1. *Public Comment:* Distinguish between nontraditional and traditional contractors based on the agreement value using TINA threshold of $550,000, or based on the CAS threshold for full ($50 million) or modified ($7.5 million) coverage (public meeting).

*DoD Response:* The final rule distinguishes between traditional and nontraditional Defense contractors for purposes of determining the level of approval for (a) the use of an IPA and (b) deviating from application of the policy. DoD believes that, when used for these purposes, the statutory definitions are adequate. In addition, the use of definitions that are consistent with those in statute reduces complexity, thereby simplifying implementation of the rule.

2. *Public Comment:* Consider whether using the cost principles as a criteria for use of an Independent Public

Accountant is overly broad (public meeting).

*DoD Response:* DoD does not believe using the cost principles is overly broad for purposes of the final rule, which uses cost principles for determining the level of approval to (a) use an IPA and (b) deviate from application of the policy. When a contractor is performing on a contract subject to the cost principles, a government representative (*e.g.*, Defense Contract Audit Agency (DCAA)) has access to that contractors books and records. Therefore, DoD believes that cost principles are an appropriate for determining when an IPA may be used.

**Regulatory Evaluation**

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

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

*Unfunded Mandates Reform Act (Section 202 of Public Law 104–4)*

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

*Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)*

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional record keeping or other significant expense by project participants.

*Public Law 96–511, ''Paperwork Reduction Act of 1995'' (44 U.S.C. 3501 et seq.)*

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

*Executive Order 13132, ''Federalism''*

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

**List of Subjects in 32 CFR Part 3**

Government procurement, Transactions for prototype projects.

■ Accordingly, 32 CFR part 3 is amended to read as follows:

## PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

■ 1. The authority citation for 32 CFR part 3 continues to read as follows:

**Authority:** Section 845 of Public Law 103–160, 107 STAT. 1547, as amended.

■ 2. Section 3.4 is revised to read as follows:

### § 3.4 Definitions.

*Agency point of contact (POC).* The individual identified by the military department or defense agency as its POC for prototype OTs.

*Agreements Officer.* An individual with the authority to enter into, administer, or terminate OTs for prototype projects and make related determinations and findings.

*Approving Official.* The official responsible for approving the OTs acquisition strategy and resulting OT agreement. This official must be at least one level above the Agreements Officer and at no lower level than existing agency thresholds associated with procurement contracts.

*Awardee.* Any business unit that is the direct recipient of an OT agreement.

*Business unit.* Any segment of an organization, or an entire business organization which is not divided into segments.

*Contracting activity.* An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It includes elements designated by the Director of a Defense Agency which has been delegated contracting authority through its agency charter.

*Cost-type OT.* Agreements where payments are based on amounts generated from the awardee's financial or cost records or that require at least one third of the total costs to be provided by non-Federal parties pursuant to statute or require submittal of financial or cost records/reports to determine whether additional effort can be accomplished for the fixed amount.

*Fixed-price type OT.* Agreements where payments are not based on amounts generated from the awardee's financial or cost records.

*Head of the contracting activity (HCA).* The official who has overall responsibility for managing the contracting activity.

*Nontraditional Defense contractor.* A business unit that has not, for a period of at least one year prior to the date of the OT agreement, entered into or performed on (1) any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or (2) any other contract in excess of $500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

*Procurement contract.* A contract awarded pursuant to the Federal Acquisition Regulation.

*Qualified Independent Public Accountant.* An accountant that is licensed or works for a firm that is licensed in the state or other political jurisdiction where they operate their professional practice and comply with the applicable provisions of the public accountancy law and rules of the jurisdiction where the audit is being conducted.

*Segment.* One of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service.

*Senior Procurement Executive.* The following individuals:

(1) Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology);

(2) Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);

(3) Department of the Air Force—Assistant Secretary of the Air Force (Acquisition).

(4) The Directors of Defense Agencies who have been delegated authority to act as Senior Procurement Executive for their respective agencies.

*Single Audit Act.* Establishes uniform audit requirements for audits of state and local government, universities, and non-profit organizations that expend Federal awards.

*Subawardee.* Any business unit of a party, entity or subordinate element performing effort under the OT agreement, other than the awardee.

*Traditional Defense contractor.* Any business unit that does not meet the definition of a nontraditional Defense contractor.

■ 3. New § 3.8 is added to read as follows:

### § 3.8 DoD access to records policy.

(a) *Applicability.* This section provides policy concerning DoD access to awardee and subawardee records on OT agreements for prototype projects. This access is separate and distinct from Comptroller General access.

(1) *Fixed-price type OT agreements.* (i) *General*—DoD access to records is not generally required for fixed-price type OT agreements. In order for an agreement to be considered a fixed-price type OT agreement, it must adequately specify the effort to be accomplished for a fixed amount and provide for defined payable milestones, with no provision for financial or cost reporting that would be a basis for making adjustment in either the work scope or price of the effort.

(ii) *Termination considerations.* The need to provide for DoD access to records in the case of termination of a fixed-price type OT can be avoided by limiting potential termination settlements to an amount specified in the original agreement or to payment for the last completed milestone. However, if a fixed-price agreement provides that potential termination settlement amounts may be based on amounts generated from cost or financial records and the agreement exceeds the specified threshold, the OT should provide that DoD will have access to records in the event of termination.

(2) *Cost-type OT agreements.* (i) *Single Audit Act*—In accordance with the requirements of Public Law 98–502, as amended by Public Law 104–156, 110 STAT. 1396–1404, when a business unit that will perform the OT agreement, or a subawardee, meets the criteria for an audit pursuant to the Single Audit Act, the DoD must have sufficient access to the entity's records to assure compliance with the provisions of the Act.

(ii) *Traditional Defense contractors.* The DoD shall have access to records on cost-type OT agreements with traditional Defense contractors that provide for total Government payments in excess of $5,000,000. The content of the access to records clause shall be in accordance with paragraph (c) of this section. The value establishing the threshold is the total value of the agreement including all options.

(iii) *Nontraditional Defense contractors.* The DoD should have access to records on cost-type OT agreements with nontraditional Defense contractors that provide for total Government payments in excess of $5,000,000. The content of the access to records clause should be in accordance with paragraph (c) of this section. The value establishing the threshold is the total value of the agreement including all options.

(iv) *DoD access below threshold.* The Agreements Officer has the discretion to determine whether to include DoD access to records when the OT does not meet any of the requirements in (a)(2)(i) through (a)(2)(iii) of this section. The content of that access to records clause should be tailored to meet the particular circumstances of the agreement.

(v) *Examples of cost-type OT agreements.* (A) An agreement that requires at least one-third cost share pursuant to statute.

(B) An agreement that includes payable milestones, but provides for adjustment of the milestone amounts based on actual costs or reports generated from the awardee's financial or cost records.

(C) An agreement that is for a fixed-Government amount, but the agreement provides for submittal of financial or cost records/reports to determine whether additional effort can be accomplished for the fixed amount.

(3) *Subawardees.* When a DoD access to records provision is included in the OT agreement, the awardee shall use the criteria established in paragraphs (a)(2)(i) through (a)(2)(iii) of this section to determine whether DoD access to records clauses should be included in subawards.

(b) *Exceptions.* (1) *Nontraditional Defense contractors*—(i) The Agreements Officers may deviate, in part or in whole, from the application of this access to records policy for a nontraditional Defense contractor when application of the policy would adversely impact the government's ability to incorporate commercial technology or execute the prototype project.

(ii) The Agreements Officer will document:

(A) What aspect of the audit policy was not applied;

(B) Why it was problematic;

(C) What means will be used to protect the Government's interest; and

(D) Why the benefits of deviating from the policy outweigh the potential risks.

(iii) This determination will be reviewed by the approving official as part of the pre-award approval of the agreement and submitted to the agency POC within 10 days of award.

(iv) The agency POC will forward all such documentation received in any given fiscal year, to the Director, Defense Procurement by 15 October of each year.

(2) *Traditional Defense contractor.* (i) Any departure from this policy for other than nontraditional Defense contractors must be approved by the Head of the Contracting Activity prior to award and set forth the exceptional circumstances justifying deviation.

(ii) Additionally, the justification will document:

(A) What aspect of the policy was not applied;

(B) Why it was problematic;

(C) What means will be used to protect the Government's interest; and

(D) Why the benefits of deviating from the policy outweigh the potential risks.

(iii) The HCA will forward documentation associated with such waivers in any given fiscal year, to the Director, Defense Procurement by 15 October of each year.

(3) *DoD access below the threshold.* When the Agreements Officer determines that access to records is appropriate for an agreement below the $5,000,000 threshold, the content, length and extent of access may be mutually agreed to by the parties, without documenting reasons for departing from the policy of this section.

(4) *Flow down provisions.* The awardee shall submit justification for any exception to the DoD access to records policy to the Agreements Officer for subawardees. The Agreements Officer will review and obtain appropriate approval, as set forth in paragraphs (b)(1) and (b)(2) of this section.

(c) *Content of DoD access to records clause.* When a DoD access to records clause is included as part of the OT agreement, address the following areas during the negotiation of the clause:

(1) *Frequency of audits.* Audits will be performed when the Agreements Officer determines it is necessary to verify statutory cost share or to verify amounts generated from financial or cost records that will be used as the basis for payment or adjustment of payment.

(2) *Means of accomplishing audits.* (i) *Business units subject to the Single Audit Act*—When the awardee or subawardee is a state government, local government, or nonprofit organization whose Federal cost reimbursement contracts and financial assistance agreements are subject to the Single Audit Act (Public Law 98–502, as amended by Public Law 104–156, 110 STAT. 1396–1404), the clause must apply the provisions of that Act for purposes of performing audits of the awardee or subawardee under the agreement.

(ii) *Business units not subject to the Single Audit Act currently performing on procurement contracts.* The clause must provide that DCAA will perform any necessary audits if, at the time of agreement award, the awardee or subawardee is not subject to the Single Audit Act and is performing a procurement contract that is subject to the Cost Principles Applicable to Commercial Organizations (48 CFR part

31.2) and/or the Cost Accounting Standards (48 CFR part 99).

(iii) *Other business units.* DCAA or a qualified IPA may perform any necessary audit of a business unit of the awardee or subawardee if, at the time of agreement award, the business unit does not meet the criteria in (c)(2)(i) or (c)(2)(ii) of this section. The clause must provide for the use of a qualified IPA if such a business unit will not accept the agreement if the Government has access to the business unit's records. The Agreements Officer will include a statement in the file that the business unit is not performing on a procurement contract subject to the Cost Principles or Cost Accounting Standards at the time of agreement award, and will not accept the agreement if the government has access to the business unit's records. The Agreements Officer will also prepare a report (Part III to the annual report submission) for the Director, Defense Procurement that identifies, for each business unit that is permitted to use an IPA: the business unit's name, address and the expected value of its award. When the clause provides for use of an IPA to perform any necessary audits, the clause must state that:

(A) The IPA will perform the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Electronic copies of the standards may be accessed at *www.gao.gov.* Printed copies may be purchased from the U.S. Government Printing Office (for ordering information, call (202) 512–1800 or access the Internet Site at *www.gpo.gov*).

(B) The Agreements Officers' authorized representative has the right to examine the IPA's audit report and working papers for 3 years after final payment or three years after issuance of the audit report, whichever is later, unless notified otherwise by the Agreements Officer.

(C) The IPA will send copies of the audit report to the Agreements Officer and the Assistant Inspector General (Audit Policy and Oversight) [AIG(APO)], 400 Army Navy Drive, Suite 737, Arlington, VA 22202.

(D) The IPA will report instances of suspected fraud directly to the DoDIG.

(E) The Government has the right to require corrective action by the awardee or subawardee if the Agreements Officer determines (subject to appeal under the disputes clause of the agreement) that the audit has not been performed or has not been performed in accordance with GAGAS. The Agreements Officer should take action promptly once the Agreements Officer determines that the audit is not being accomplished in a timely manner or the audit is not performed in accordance with GAGAS but generally no later than twelve (12) months of the date requested by the Agreements Officer. The awardee or subawardee may take corrective action by having the IPA correct any deficiencies identified by the Agreements Officer, having another IPA perform the audit, or electing to have the Government perform the audit. If corrective action is not taken, the Agreements Officer has the right to take one or more of the following actions:

(*1*) Withhold or disallow a specified percentage of costs until the audit is completed satisfactorily. The agreement should include a specified percentage that is sufficient to enhance performance of corrective action while also not being unfairly punitive.

(*2*) Suspend performance until the audit is completed satisfactorily; and/or

(*3*) Terminate the agreement if the agreements officer determines that imposition of either (c)(2)(iii)(E)(1) or (c)(2)(iii)(e)(2) of this section is not practical.

(F) If it is found that the awardee or subawardee was performing a procurement contract subject to Cost Principles Applicable to Commercial Organizations (48 CFR part 31.2) and/or Cost Accounting Standards (48 CFR part 99) at the time of agreement award, the Agreements Officer, or an authorized representative, has the right to audit records of the awardee or subawardee to verify the actual costs or reporting information used as the basis for payment or to verify statutorily required cost share under the agreement, and the IPA is to be paid by the awardee or subawardee. The cost of an audit performed in accordance with this policy is reimbursable based on the business unit's established accounting practices and subject to any limitations in the agreement.

(3) *Scope of audit.* The Agreements Officer should coordinate with the auditor regarding the nature of any audit envisioned.

(4) *Length and extent of access.* (i) *Clauses that do not provide for use of an IPA*—The clause must provide for the Agreements Officer's authorized representative to have access to directly pertinent records of those business units of the awardee or subawardee's performing effort under the OT agreement, when needed to verify the actual costs or reporting used as the basis for payment or to verify statutorily required cost share under the agreement.

(ii) *Clauses that provide for use of an IPA to perform the audits.* The clause must:

(A) Provide the Agreements Officer's authorized representative access to the IPA's audit reports and working papers to ensure that the IPA has performed the audit in accordance with GAGAS.

(B) State that the Government will make copies of contractor records contained in the IPA's work papers if needed to demonstrate that the audit was not performed in accordance with GAGAS.

(C) State that the Government has no direct access to any awardee or subawardee records unless it is found that the awardee or subawardee was performing a procurement contract subject to Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99) at the time of agreement award.

(iii) *Business Units subject to the Single Audit Act.* The clause must provide access to the extent authorized by the Single Audit Act.

(iv) *Record Retention/Period of Access.* The clause must require that the awardee and subawardee retain, and provide access to, the records referred to in (c)(4)(i) and (c)(4)(ii) of this section for three years after final payment, unless notified of a shorter or longer period by the Agreements Officer.

(5) *Awardee flow down responsibilities.* Agreements must require awardees to include the necessary provisions in subawards that meet the conditions set forth in this DoD access to records policy.

(d) *DoDIG and GAO access.* In accordance with statute, if an agreement gives the Agreements Officer or another DoD component official access to a business unit's records, the DoDIG or GAO are granted the same access to those records.

Dated: May 12, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–12553 Filed 5–19–03; 8:45 am]

BILLING CODE 5001–08–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD05–03–047]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; Chesapeake Bay Bridges Swim Races, Chesapeake Bay, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation of regulation.

**SUMMARY:** The Coast Guard is implementing the special local regulations at 33 CFR 100.507 during the Twelfth Annual Great Chesapeake Bay Swim Event to be held on June 8, 2003. This action is necessary to provide for the safety of life on navigable waters before, during and after the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and support vessels in the event area.

**EFFECTIVE DATES:** 33 CFR 100.507 is effective from 11 a.m. to 3 p.m. local time on June 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, at (410) 576–2674.

**SUPPLEMENTARY INFORMATION:** The Great Chesapeake Bay Swim, Inc. will sponsor the ''Great Chesapeake Bay Swim Event'' on the waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge. Approximately 600 swimmers will start from Sandy Point State Park and swim between the spans of the William P. Lane Jr. Memorial Bridge to the Eastern Shore. A large fleet of support vessels will be accompanying the swimmers. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.507 will be in effect for the duration of the event. Under provisions of 33 CFR 100.507, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Vessel traffic will be allowed to transit the regulated area as the swim progresses, when the Patrol Commander determines it is safe to do so.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: May 13, 2003.

**Ben R. Thomason III,**

*Captain, Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 03–12550 Filed 5–19–03; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD05–02–065]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Raccoon Creek, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the operating regulations for the Consolidated Rail Corporation (CONRAIL) Railroad Bridge across Raccoon Creek at mile 2.0, in Bridgeport, New Jersey. This final rule for the CONRAIL Railroad Bridge eliminates the need for a bridge tender by allowing the bridge to be operated by a train crewmember. The final rule will provide for the reasonable needs of navigation.

**DATES:** This rule is effective June 19, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–02–065 and are available for inspection or copying at Commander (oan), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On February 6, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Raccoon Creek, New Jersey'' in the **Federal Register** (68 FR 6100). We received one letter commenting on the proposed rule. No public hearing was requested nor held.

### Background and Purpose

CONRAIL, who owns and operates this movable (swing-type) bridge, requested changes to the operating procedure for the drawbridge located at mile 2.0 across Raccoon Creek, in Bridgeport, New Jersey. Currently, Title 33 Code of Federal Regulations (CFR) Part 117.741 requires the bridge to open on signal from March 1 through November 30, from 7 a.m. to 11 p.m. At all other times, the draw must open on signal if at least four hours notice is given. The draw must also open at all times as soon as possible for passage of a public vessel of the United States.

CONRAIL installed a new Programmable Logic Controller and associated mechanical, electrical and signal apparatus on the CONRAIL Railroad Bridge over Raccoon Creek in Bridgeport, New Jersey. This rule allows a radio-controlled system to operate the opening and closing of the swing span from the cab of the locomotive. From March 1 through November 30, the swing bridge will normally be left in the fully opened position displaying flashing green channel lights indicating that vessels may pass through. At all other times, the draw of the CONRAIL Railroad Bridge need only open on signal if at least four hours notice is given by calling (856) 231–2393.

Under this rule, when a train approaches the bridge it will stop and a train crewmember will observe the waterway for approaching craft, which will be allowed to pass. The train crewmember will then enter a prearranged code number using a radio keypad. The radio code will send a radio signal to the Programmable Logic Controller attached to the bridge, which will begin the process of closing the bridge. At that time, the bridge channel lights will change from flashing green to flashing red, a horn blast will sound four times, followed by a pause, then the four horn blasts will be repeated and the bridge will close. Once closed, the train will proceed across the bridge. After the train has cleared the swing span, which is approximately 300 feet from the bridge, the horn will automatically sound five times to indicate the span of the bridge is about to return to the full open position. Channel traffic lights would change from flashing green to flashing red any time the bridge is not in the full open position. In the full open position, the channel traffic lights will turn from flashing red to flashing green.

This rule will make the closure process of the CONRAIL Railroad Bridge more efficient during train crossings and periodic maintenance, and will save operational costs by eliminating bridge tenders while providing greater bridge operating capabilities.

### Discussion of Comments and Change

The Coast Guard received one comment on the NPRM. The comment offered by the U.S. Fish and Wildlife Service (Service) indicated that the federally listed (threatened) bald eagle currently nests within 1.6 miles of the CONRAIL Railroad Bridge. The Service

states that bald eagles from the nearby nest site may occasionally forage or roost in the vicinity of the bridge. Based on the current available information, the Service does not anticipate adverse impacts to the bald eagle and does not object to the proposed changes in the operation of the CONRAIL Railroad Bridge. Therefore, no changes were made to the final rule.

**Regulatory Evaluation**

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

We reached this conclusion based on the fact that this final rule for the CONRAIL Railroad Bridge will provide for greater flow of vessel traffic than the current regulations for the drawbridge. Under the current regulations, the CONRAIL Railroad Bridge remains closed and opens after proper signal from March 1 through November 30. The final rule will require the bridge to remain in the open position during this period, permitting vessels to pass freely. The bridge will close only for train crossings and bridge maintenance. This final rule will provide for the reasonable needs of navigation.

**Small Entities**

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

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

This final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The final rule will provide for the CONRAIL Railroad Bridge to remain in the open position from March 1 through November 30, allowing the free flow of vessel traffic. The bridge would only close for the passage of trains and maintenance.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. In our notice of proposed rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or option for compliance.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 117**

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); § 117.255 also issued under the authority of P.L. 102–587, 106 Stat. 5039.

■ 2. § 117.741 is revised to read as follows:

**§ 117.741 Raccoon Creek.**

(a) The draw of the Route 130 highway bridge, mile 1.8 at Bridgeport, shall open on signal:

(1) March 1 through November 30, from 7 a.m. to 11 p.m.

(2) At all other times, if at least four hours notice is given.

(b) The draw of the CONRAIL Railroad Bridge, mile 2.0 at Bridgeport, shall operate as follows:

(1) From March 1 through November 30, the draw shall be left in the open position at all times and will only be closed for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(i) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b).

(ii) Before the bridge closes for any reason, a train crewmember will observe the waterway for approaching craft, which will be allowed to pass. A train crewmember will then operate the bridge by radiophone. The bridge shall only be closed if a train crewmember's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

(iii) While the CONRAIL Railroad Bridge is moving from the full open to the full closed position, a train crewmember will maintain constant surveillance of the navigational channel to ensure no conflict with maritime traffic exists. In the event of failure or obstruction, the train crewmember will stop the bridge and return the bridge to the open position.

(iv) The CONRAIL Railroad channel traffic lights will change from flashing green to flashing red anytime the bridge is not in the full open position.

(v) During closing of the span, the channel traffic lights will change from flashing green to flashing red, the horn will sound four times, followed by a pause, then the four blasts will be repeated and the bridge will close. When the rail traffic has cleared the swing span, the horn will automatically sound five times to signal the draw of the CONRAIL Railroad Bridge is about to return to its full open position.

(vi) During open span movement, the channel traffic lights will be flashing red, the horn will sound four times, followed by a pause, then four blasts will be repeated until the bridge is in the full open position. In the full open position, the channel traffic lights will then turn from flashing red to flashing green.

(2) At all other times, the draw may be left in the closed position and opened on signal if at least four hours notice is given by telephone at (856) 231–2393.

Dated: April 29, 2003.

**Sally Brice O'Hara,**

*Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 03–12491 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–01–002]**

**RIN 1625–AA00**

## Safety Zone; Captain of the Port Detroit Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of implementation of regulation.

**SUMMARY:** The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during June 2003. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

**DATES:** Effective from 9 p.m. (Eastern Time) on June 23, 2003 to 11 p.m. (Eastern Time) on June 29, 2003.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Brandon Sullivan, U.S. Coast Guard Marine Safety Office, Detroit, MI at (313) 568–9580.

**SUPPLEMENTARY INFORMATION:** The Coast Guard is implementing the permanent safety zones in 33 CFR 165.907 (66 FR 27868, May 21, 2001), for fireworks displays in the Captain of the Port Detroit Zone during June 2003. The following safety zones are in effect for fireworks displays occurring in the month of June 2003:

(1) *Bay-Rama Fishfly Festival, New Baltimore, MI. Location.* All waters off New Baltimore City Park, Lake St. Clair-Anchor Bay bounded by the arc of a circle with a 300-yard radius with its center located at approximate position 42°41′ N, 082°44′ W (NAD 83).

*Enforcement period.* June 26, 2003, from 9 p.m. to 11 p.m.

(2) *St. Clair Shores Fireworks, St. Clair Shores, MI. Location.* All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°32′ N, 082°51′ W, about 1000 yards east of Veterans Memorial Park (off Masonic Rd.), St. Clair Shores, MI (NAD 83).

*Enforcement period.* June 27, 2003, from 10 p.m. to 11 p.m.

(3) *Port Huron 4th of July Fireworks, Port Huron, MI. Location.* All waters of the Black River within a 300 yard radius of the fireworks barge in approximate position 42°58′ N, 082°25′ W about 300 yards east of 223 Huron Ave., in the Black River (NAD 83).

*Enforcement period.* June 29, 2003, from 10 p.m. until 11 p.m.

(4) *Sigma Gamma Assoc., Grosse Pointe Farms, MI.*

*Location.* The waters off Ford's Cove, Lake St. Clair bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°27′ N, 082°52′ W (NAD 83).

*Enforcement period.* June 23, 2003 from 9 p.m. to 10 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be in effect for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by case basis. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Detroit on channel 16, VHF–FM.

Dated: May 9, 2003.

**Patrick G. Gerrity,**

*Commander, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 03–12498 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–03–212]**

**RIN 1625–AA00**

## Safety Zone; Lake Michigan, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety for the Chicago to Michigan City sailboat race. The safety zone encompasses a portion of Lake Michigan. This safety zone is necessary to ensure vessel safety in the vicinity of the race start area, protecting both competitors and spectators from

hazards associated with this sail boat race. This safety zone is intended to restrict vessel traffic from a portion of southern Lake Michigan.

**DATES:** This temporary final rule is effective from 7 a.m. (local), until 10 a.m. on June 7, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CDG09–03–212 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Chicago, Illinois 60527 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2125.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Under 5 U.S.C 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to public interest because the June 7, 2003 event would then be without an enforceable zone, thus placing the safety and property of spectators at unnecessary risk.

## Background and Purpose

During the start of the Chicago to Michigan City sailboat race, the Coast Guard is establishing a safety zone encompassing the starting area. The Coast Guard expects approximately 150 vessels to participate in this event. This safety zone is required to ensure the safety of vessels and spectators from hazards associated with this sailing event. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF Channel 16.

## Discussion of Rule

The safety zone will encompass all waters of Lake Michigan bounded by the arc of a circle with a 1000 foot radius with its center in approximate position 41°52′67″ N; 087°35′24″ W. These coordinates are based upon North American Datum 1983. All vessels except those officially participating in this event are prohibited from entering the safety zone without the permission of the Captain of the Port Chicago or his on-scene representative. The on-scene representative will be the Patrol Commander.

## Regulatory Evaluation

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

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

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

## Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for two hours on the day of the event.

The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Chicago (see **ADDRESSES.**)

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

## Collection of Information

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

## Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

## Unfunded Mandates Reform Act

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

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**Energy Effects**

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

**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.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–212 is added to read as follows:

**§ 165.T09–212 Safety Zone; Lake Michigan, Chicago, Illinois.**

(a) *Location.* The following is a safety zone: All waters of Lake Michigan bounded by the arc of a circle with a 1000-foot radius with its center in approximate position 41°52′67″N; 087°35′24″W. These coordinates are based upon North American Datum 1983.

(b) *Regulations.* All vessels, except those officially participating in the Chicago to Michigan City Sailboat Race, are prohibited from entering this safety zone without the permission of the Captain of the Port Chicago or his designated on-scene representative which will be the Patrol Commander.

(c) *Effective date.* This rule is effective from 7 a.m. until 10 a.m. on June 7, 2003.

Dated: May 5, 2003.

**Raymond E. Seebald,**

*Captain, U.S. Coast Guard, Captain of the Port Chicago.*

[FR Doc. 03–12497 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–03–213]**

**RIN 1625–AA00**

## Safety Zone; Betsie Bay, Lake Michigan

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in Betsie Bay, Frankfort, Michigan. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over a portion of Betsie Bay. The safety zone is intended to restrict vessel traffic from a portion of Betsie Bay in Lake Michigan, Frankfort, Michigan.

**DATES:** This temporary final rule is effective from 9 p.m. (local) until 11 p.m. (local) on June 28, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CDG09–03–213 and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Chicago, Illinois 60527 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2125.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

**Background and Purpose**

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other

Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

**Discussion of Rule**

The safety zone for the Elberta fireworks will encompass all waters of Betsie Bay in Lake Michigan, off Frankfort, Michigan within the arc of a circle with a 250-foot radius from the fireworks launch site with its center in the approximate position 44°37′41″ N, 086°14′05″ W. These coordinates are based upon North American Datum 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Chicago or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

**Regulatory Information**

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

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

**Regulatory Evaluation**

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

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

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

**Small Entities**

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for two hours on the day of the event.

The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the fireworks display in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Chicago (see **ADDRESSES.**)

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

**Collection of Information**

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

**Federalism**

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically

significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**Energy Effects**

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

**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.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–213 is added to read as follows:

**§ 165.T09–213 Safety Zone; Betsie Bay, Frankfort, Michigan.**

(a) *Location.* The following area is a safety zone: all waters and adjacent shoreline of Betsie Bay (off Frankfort, Michigan), Lake Michigan within the arc of a circle with a 250-foot radius from the fireworks launch site with its center in the approximate position of 44°37′41″ N, 086°14′05″ W (NAD 83).

(b) *Effective date.* This safety zone is effective from 9 p.m. (local) until 11 p.m. (local), June 28, 2003.

(c) *Regulations.* This safety zone is being established to protect the boating public during a planned fireworks display. In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

Dated: May 5, 2003.

**Raymond E. Seebald,**

*Captain, U.S. Coast Guard, Captain of the Port Chicago.*

[FR Doc. 03–12495 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–03–203]**

**RIN 1625–AA00**

## Safety Zones; Captain of the Port Chicago Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing fifteen permanent safety zones for annual fireworks displays throughout the Captain of the Port Chicago Zone. These safety zones are necessary to control vessel traffic within the immediate vicinity of fireworks launch sites and to ensure the safety of life and property during each event. These safety zones are intended to restrict vessels from the area encompassed by the safety zone for the duration of each fireworks display.

**DATES:** This rule is effective on May 20, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–03–203 and are available for inspection or copying at Coast Guard Marine Safety Office Chicago, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2175.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On February 14, 2003, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; Captain of the Port Chicago Zone, in the **Federal Register** (68 FR 7473, February 14, 2003). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The events listed in this rule have been regularly held on an annual basis with widespread public participation. The Coast Guard has not received any complaints or negative comments previously with regard to these events. Delaying the effective date would be contrary to public interest because events being held in early June would be without an enforceable zone, thus placing the safety and property of spectators at unnecessary risk.

**Background and Purpose**

Each year, various organizations in Illinois and Michigan sponsor fireworks displays at the same locations during the same general time periods. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazards associated with these events, the Captain of the Port Chicago has determined that fireworks launches in close proximity to watercraft pose a risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement will ensure the safety of persons and property at these events and help minimize the associated risk.

In the past, and for those reasons stated above, the Captain of the Port has annually promulgated separate temporary rulemaking for each fireworks event. This proposed rule merely consolidates past temporary rulemakings into one rulemaking, includes other events for the purpose of

uniformity, and allows for a more thoughtful, timely rulemaking process. This rulemaking will create a permanent rule listing the safety zones for each fireworks launch platform used for each fireworks display. All geographic coordinates are based upon North American Datum 1983 (NAD 83).

**Discussion of Comments and Changes**

During the public comment period, the Coast Guard received no comments or related information pertaining to this rulemaking.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has exempted it from review under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this final 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 final rule will not have a significant economic impact on a substantial number of small entities.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone sizes were carefully considered and consist in size such that they will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the safety zone. In addition, in the event that it may be necessary, prior to transiting commercial vessels can request permission from the Captain of the Port Chicago to transit through the zone.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking process. No comments or questions were received from any small businesses.

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

**Collection of Information**

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

**Federalism**

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Environment**

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.918 to read as follows:

**§ 165.918 Safety Zones; Annual Fireworks Displays in the Captain of the Port Chicago Zone**

(a) *Safety zones.* The following areas are designated safety zones:

(1) *Evanston Fourth of July Fireworks—Evanston, IL:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42§ 02′58″ N, 087§ 40′22″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(2) *Independence Day Fireworks—Manistee, MI:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 44°14′51″ N, 086°20′46″ W (NAD 83) (Off First Street Beach).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(3) *Independence Day Fireworks—Lake Kalamazoo, Saugatuck, MI:*

(i) *Location.* All waters and adjacent shoreline of Lake Kalamazoo, Saugatuck, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42°38′52.5″ N, 086°12′18.5″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(4) *Independence Day Fireworks—White Lake, Whitehall, MI:*

(i) *Location.* All waters and adjacent shoreline of White Lake, Whitehall, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position of 43°24′33.5″ N, 086°21′28.5″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(5) *Pentwater July 3rd Fireworks—Lake Michigan, Pentwater, MI:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan and the Shipping Channel, Pentwater, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site on the North Breakwall with its center in approximate position of 43°46′56.5″ N, 086°26′38″ W (NAD 83).

(ii) *Expected date and time.* First Week in July; sunset to termination of display.

(6) *Venetian Night Fireworks—Lake Kalamazoo, Saugatuck, MI:*

(i) *Location.* All waters and adjacent shoreline of Lake Kalamazoo, Saugatuck, MI. within the arc of a circle with a 1000-foot radius from the fireworks launch site with its center in approximate position 42°38′52.5″ N, 086°12′18.5″ W (NAD 83).

(ii) *Expected date and time.* The fourth weekend in July; or the first weekend in August; sunset to termination of display:

(7) *Venetian Night Fireworks—Lake Michigan, Hammond, IN:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, Hammond, IN. within the arc of a circle with a 840-foot radius from the fireworks launch site with its center in approximate position of 41°41′54″ N, 087°30′46″ W (NAD 83).

(ii) *Expected date and time.* The first weekend in August; sunset to termination of display.

(8) *Venetian Night Fireworks—Monroe Street Harbor—Chicago, IL:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, Chicago, IL. within the arc of a circle with a 1000-foot radius from the fireworks launch site at Monroe Street Harbor with its center in approximate position of 41°52′41″ N, 087°36′37″ W (NAD 83).

(ii) *Expected date and time.* The fourth weekend in July; or the first weekend in August; sunset to termination of display.

(9) *Wings Over the Lake Air Show—Michigan City, IN:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, off Washington Park, Michigan City, IN. encompassed by a line drawn between the following coordinates starting at 41°43′39″ N, 086°54′32″ W; northwest to 41°44′06″ N, 086°54′44″ W; northeast to 41°44′21″ N, 086°53′52″ W; southeast to 41°43′55″ N, 086°53′40″ W; then southwest back to the point of origin (NAD 83). The safety zone starts approximately 250-feet from the East Pierhead and 250-feet from Washington Park Beach.

(ii) *Expected Date and Time.* The first week in July.

(10) *YMCA Lake Michigan Swim—Ferrysburg, MI:*

(i) *Location.* All waters and adjacent shoreline of Lake Michigan, off the Ferrysburg North Pier within 100-feet of a straight line from 43°03.45′ N, 086°13.4′ W; to 43°05′ N, 086°15.24′ W (NAD 83).

(ii) *Expected date and time.* The 3rd week in July; from 8 a.m. (local) until the end of the event.

(11) *Team Aquatics Ski Show—Grand River, Grand Haven, MI:*

(i) *Location.* All waters and adjacent shoreline of the Grand River, Grand Haven, MI. from 43°04′08″ N, 086°14′13″ W; thence east to 43°04′06″ N, 086°14′07″ W; thence southwest to 43°03′53″ N, 086°14′14″ W; and east to 43°03′51.5″ N, 086°14′07.5″ W (NAD 83).

(ii) *Expected date and time.* The 4th week in July; from 6 p.m. (local) until 8:30 p.m. (local).

(12) *Chicago Flatwater Classic—Chicago River, Chicago, IL:*

(i) *Location.* All waters and adjacent shoreline of the Chicago River from a line drawn across the river at mile marker 323 to a line drawn across the river at mile marker 331.

(ii) *Expected date and time.* The 2nd weekend in August; from 9 a.m. (local) until 3:30 p.m. (local).

(13) *Navy Pier Summer Fireworks—Lake Michigan, Chicago, IL.*

(i) *Locations.*

(1) *Primary launch site.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius from the fireworks launch platform with its center in approximate position 41°53′18″ N, 087°36′08″ W (NAD 83).

(2) *Alternate launch site.* In the case of inclement weather, the alternate launch site is all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius with its center in approximate position 41°53′24″ N, 087°35′44″ W (NAD 83).

(ii) *Expected dates and times.* Every Wednesday and Saturday evening from 9 p.m. (local) until termination of display from June 1 thru September 1.

(14) *Navy Pier 4th of July Fireworks—Lake Michigan, Chicago, IL.*

(i) *Locations.*

(1) *Primary launch site.* All waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius from the fireworks launch platform with its center in approximate position 41°53′18″ N, 087°36′08″ W (NAD 83).

(2) *Alternate launch site.* In the case of inclement weather, the alternate launch site is all waters and adjacent shoreline of Lake Michigan bounded by the arc of a circle with a 1400-foot radius with its center in approximate position 41°53′24″ N, 087°35′44″ W (NAD 83).

(ii) *Expected date and time.* The first week of July; sunset to termination of display.

(15) *St. Joseph's River Marathon Swim—St. Joseph, MI.*

(i) *Location.* All the waters of Lake Michigan (off of St. Joseph, MI.), and the St. Joseph River, within 100 feet of the race course.

(ii) *Expected date and time.* The 3rd week in July; from 11 a.m. (local) until the end of the event.

(b) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. U.S. Coast Guard Auxiliary, representatives of the event organizer, and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

(3) In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Chicago to transit the safety zone. Approval in such cases will be case-by-case. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via Channel 16, VHF-FM.

(c) Captain of the Port Chicago will announce the exact time and location of the annual events listed in this regulation by Notice of Implementation, Broadcast Local Notice to Mariners, or any other means deemed appropriate.

Dated: May 5, 2003.

**Raymond E. Seebald,**

*Captain, U.S. Coast Guard, Captain of the Port, Chicago.*

[FR Doc. 03–12493 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[COTP Western Alaska 03–002]**

**RIN 1625–AA00**

## Security Zone: Protection of Alaska Marine Highway System (AMHS) Vessel M/V Kennicott in Western Alaska Waters

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** Increases in the Coast Guard's maritime security posture necessitate establishing temporary regulations for the security of Alaska Marine Highway System (AMHS) vessels in the navigable waters of Western Alaska. This security zone will provide for the regulation of vessel traffic in the vicinity of AMHS vessels in the navigable waters of Western Alaska.

**DATES:** This temporary rule is effective April 28, 2003, until September 19, 2003.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket COTP Anchorage 03–012 and are available for inspection or copying at Marine Safety Office Anchorage, 510 L Street, Suite 100, Anchorage, Alaska 99501, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** CDR Robert Forgit, Marine Safety Office Anchorage, 510 L Street, Suite 100, Anchorage, Alaska 99501, (907) 271–6771.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

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

### Background and Purpose

The Coast Guard, through this action, intends to assist AMHS vessels by establishing a security zone to exclude persons and vessels from the immediate vicinity. Recent events highlight the fact that there are hostile entities operating with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317 (Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks), 67 FR 59447 (Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)).

Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

### Discussion of Rule

This rule controls vessel movement in a regulated area surrounding AMHS high capacity passenger vessels that are in service. For the purpose of this regulation, the AMHS vessel is the M/V Kennicott. All vessels authorized to be within 100 yards of this vessel shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the on-scene official patrol or AMHS vessel master. No vessel, except a public vessel (defined below), is allowed within 100 yards of the subject vessel, unless authorized by the on-scene official patrol or AMHS vessel master. Vessels requesting to pass within 100 yards of this vessel shall contact the on-scene official patrol or AMHS vessel master on VHF–FM channel 16 or 13. The on-scene official patrol or AMHS vessel master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of the subject AMHS vessels in order to ensure a safe passage in accordance with the Navigation Rules. Similarly, commercial vessels anchored in a designated anchorage area may be permitted to remain at anchor within 100 yards of passing this AMHS vessel. Public vessels for the purpose of this Temporary Final Rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

### Regulatory Evaluation

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

the Department of Homeland Security (DHS).

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

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

**Small Entities**

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

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

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

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

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

The Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of the Temporary Final Rule to accommodate the special needs of mariners in the vicinity of AMHS vessels and the Coast Guard's commitment to working with the Tribes, we have determined that AMHS vessel security and fishing rights protection need not be incompatible and therefore have determined that this Temporary Final Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Environment**

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

rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' (CED) will be available in the docket where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 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. From APR 28, 2003, until SEPT 19, 2003, § 165.T17–005 is added to read as follows:

**§ 165.T17–005 Security Zone Regulations, Alaska Marine Highway System Vessel Security Zone, Western Alaska, Captain of the Port Zone.**

(a) The following definitions apply to this section:

*Alaska Law Enforcement Officer* means any General Authority Alaska Peace Officer, Limited Authority Alaska Peace Officer, or Specially Commissioned Alaska Peace Officer as defined by Alaska State laws.

*Alaska Marine Highway System High Capacity Passenger Vessel* (''AMHS vessel'') includes the following vessel; M/V Kennicott.

*AMHS Vessel Security Zone* is a regulated area of land and water, established by this section, surrounding AMHS vessels for a 100 yard radius, that is necessary to provide for the security of these vessels.

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

*Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.05–25 and includes those waters described in 33 U.S.C. 1222(5) and 50 U.S.C. 195(2).

*Navigation Rules* means the Navigation Rules, International-Inland.

*Official Patrol* means those persons designated by the Captain of the Port to monitor an AMHS vessel security zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Persons authorized to enforce this section are designated as the Official Patrol.

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

*Western Alaska Captain of the Port Zone* means the area of land and water described in 33 CFR 3.85–15.

(b) This section applies to any vessel or person in or adjacent to the navigable waters of the United States in or adjacent to the State of Alaska west of 148° 26′ longitude and within the Western Alaska Captain of the Port Zone.

(c) An AMHS vessel security zone is established and exists for a 100 yard radius around AMHS vessels at all times when located in the navigable waters of the United States in or adjacent to the State of Alaska and within the Western Alaska Captain of the Port Zone, whether the AMHS vessel is underway, anchored, or moored.

(d) The Navigation Rules shall apply at all times within an AMHS vessel security zone.

(e) All vessels within an AMHS vessel security zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol or AMHS vessel master. No vessel or person located in or adjacent to the navigable waters of the United States to which this section applies is allowed within 100 yards of an AMHS vessel, unless authorized by the on-scene official patrol or AMHS vessel master.

(f) To request authorization to operate within 100 yards of an AMHS vessel, contact the on-scene official patrol or AMHS vessel master on VHF-FM channel 16 or 13.

(g) When conditions permit, the on-scene official patrol or AMHS vessel master should:

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

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

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

(h) Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraphs (b), (c), (e), (f), (g), (i), and (j) of this section.

(i) Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. When immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effect control in the vicinity of an AMHS vessel, any Federal Law Enforcement Officer or Alaska State Law Enforcement Officer may enforce the rules contained in this regulation pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this rule.

(j) The Captain of the Port Western Alaska may waive any of the requirements of this section for any vessel upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: April 21, 2003.

**Ronald J. Morris,**

*Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.*

[FR Doc. 03–12551 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA203–4207a; FRL–7494–4]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; $NO_X$ RACT Determinations for Lafayette College

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for Lafayette College, Easton Campus, a major source of nitrogen oxides ($NO_X$) located in Northampton County, Pennsylvania. EPA is approving this revision to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

**DATES:** This rule is effective on July 21, 2003, without further notice, unless EPA receives adverse written comment by June 19, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

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

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth at (215) 814–2034, or via e-mail at *wentworth.ellen@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

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

## II. Summary of the SIP Revision

On February 4, 2003, PADEP submitted formal revisions to its SIP to establish and impose case-by-case RACT for several major sources of VOC and $NO_X$. This rulemaking pertains to one of those sources. The other sources are subject to separate rulemaking actions. The RACT determinations and requirements in this SIP revision are included in the operating permit (OP) issued by PADEP. Lafayette College, Easton Campus, is located in the City of Easton, Northampton County, Pennsylvania, and is considered a major source of $NO_X$. In this instance, RACT has been established and imposed by PADEP in an operating permit. On February 4, 2003, PADEP submitted operating permit No. OP 48–0034 to EPA as a SIP revision. This operating permit incorporates RACT determinations for $NO_X$ for the following sources: One (1) Titusville boiler; Boiler No. 1; two (2) Keller boilers, Boiler Nos. 2 and 3; one (1) Babcock & Wilcox boiler; Boiler No. 4; six (6) oil-fired boilers; two (2) gas-fired boilers; seventeen (17) natural gas-fired emergency generators; three (3) propane-fired emergency generators; twenty-one (21) natural gas-fired water heaters; and thirty-seven (37) natural gas-fired hot air furnaces.

$NO_X$ RACT for the two (2) Keeler boilers at maximum heat input of 28.44MMBtu/hr. and the one (1) Babcock & Wilcox boiler at maximum heat input of 49.0MMBtu/hr., shall be the maintenance and operation of the sources according to the manufacturer's specifications in accordance with the presumptive RACT emission limitations found in 25 Pa. Code, Chapter 129.93(b)(2)–(3). The sources shall be operated and maintained in accordance with good air pollution control practices. $NO_X$ RACT for the seventeen (17) natural gas-fired emergency generators and the three (3) propane-fired emergency generators shall be regulated under the presumptive RACT emission limitations as described under 15 Pa. Code, Chapter 129.93(c)(5). Each generator must operate less than 500 hours in a consecutive 12-month period. Presumptive RACT shall be the maintenance and operation of the sources in accordance with the manufacturer's specifications. The sources shall also be operated and maintained in accordance with good air pollution control practices. $NO_X$ RACT for the Titusville boiler at maximum heat input of 10.82MMBtu/hr., six (6) oil-fired boilers, two (2) natural gas-fired boilers, twenty-one (21) water heaters, and thirty-seven (37) hot air heaters shall be regulated under the presumptive RACT emission limitations described under 25 Pa. Code, Chapter 129.93(c)(1). Each source shall be limited to a maximum heat input of 20MMBtu/hr. The sources shall also be operated and maintained in accordance with good air pollution control practices. The facility shall maintain a file containing all records and other data required to be collected pursuant to 25 Pa. Code section 129.95. These records must provide sufficient data and calculations to clearly demonstrate that the requirements of 25 Pa. Code sections 129.91 through 94 are met. All measurements, records and other data required to be maintained by the company shall be retained for at least two years following the date on which such measurements, records or data are recorded. If requested by PADEP, the facility shall perform a stack test in accordance with the provisions of 25 Pa. Code Chapter 139 within the time specified by PADEP.

## III. EPA's Evaluation of the SIP Revision

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

## IV. Final Action

EPA is approving the revision to the Commonwealth of Pennsylvania's SIP which establishes and requires RACT for Lafayette College, Easton Campus, (OP 48–0034) located in Northampton County, Pennsylvania. EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on July 21, 2003, without further notice unless we receive adverse comment by June 19, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## V. Statutory and Executive Order Reviews

### *A. General Requirements*

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

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

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

*B. Submission to Congress and the Comptroller General*

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

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's source-specific RACT requirements to control $NO_X$ from Lafayette College, Easton Campus, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: April 25, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

■ 40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart NN—Pennsylvania

■ 2. Section 52.2020 is amended by adding paragraph (c)(205) to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(205) Revision pertaining to $NO_X$ RACT determinations for a major source submitted by the Pennsylvania Department of Environmental Protection on February 4, 2003:

(i) Incorporation by reference.

(A) Letter submitted on February 4, 2003 by the Pennsylvania Department of Environmental Protection transmitting source-specific $NO_X$ RACT determinations.

(B) Operating Permit (OP) for Lafayette College, Easton Campus, Northampton County, OP 48–0034, effective August 18, 1997.

(ii) Additional Material. Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the source listed in paragraph (c)(205)(i) of this section.

[FR Doc. 03–12474 Filed 5–19–03; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 65

## Changes in Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** Modified Base (1-percent-annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect for the listed communities prior to this date.

**ADDRESSES:** The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

## National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

## Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

## Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

## Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

## Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

## List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

## PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Arkansas: Faulkner (Case No. 01–06–1902P) (FEMA Docket No. P7616). | City of Conway. ..... | Sept. 5, 2002, Sept. 12, 2002, *Log Cabin Democrat*. | The Honorable Tab Townsell Mayor, City of Conway, 1201 Oak Street, Conway, AR 72033. | Nov. 25, 2002 ... | 050078 |
| Illinois: Lake and Cook (Case No. 02–05–2130P) (FEMA Docket No. P7618). | Village of Deerfield | Sept. 19, 2002, Sept. 23, 2002, *Deerfield Review*. | The Honorable Steven Harris Mayor, Village of Deerfield, Village Hall, 850 Waukegan Road, Deerfield, IL 60015. | Sept. 6, 2002 .... | 170361 |
| Indiana: Hamilton (Case No. 02–05–2995P) (FEMA Docket No. P7618). | Town of Westfield ... | Oct. 22, 2002, Oct. 29, 2002, *The Noblesville Ledger*. | Mr. Michael McDonald, Town Council President, Town of Westfield, 130 Penn Street, Westfield, IN 46074. | Sept. 24, 2002 .. | 180083 |
| Kansas: | | | | | |
| Harvey (Case No. 02–07–1008P) (FEMA Docket No. P7618). | City of Newton ..... | Sept. 20, 2002, Sept. 27, 2002 *The Newton Kansan*. | The Hon. Marjorie Roberson, Mayor, City of Newton, 201 E. 6th Street, Newton, KS 67114. | Sept. 10, 2002 .. | 200133 |
| Riley (Case No. 02–07–667P) (FEMA Docket No. P7616). | City of Riley ..... | Aug. 15, 2002, Aug. 22, 2002, *The Riley Countain*. | The Honorable Gerald Baer Mayor, City of Riley, 902 West Walnut Street, Riley, KS 66531. | Nov. 21, 2002 ... | 200303 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Riley, (Case No. 02–07–666P) (FEMA Docket No. P7616). | Unincorporated Areas. | Aug. 15, 2002, Aug 22, 2002, *The Manhattan Mercury*. | Mr. Robert Newsome, Chairman, Riley County, Commissioner, Courthouse Plaza East, 115 North 4th Street, Manhattan, KS 66502. | Nov. 21, 2002 ... | 200298 |
| Michigan: Wayne (Case No. 01–05–3983P) (FEMA Docket No. P7618). | Charter Township of Brownstown. | Sept. 11, 2002, Sept. 18, 2002, *The News-Hearld*. | Mr. W. Curt Boller, Supervisor, Brownstown Twp., 21313 Telegraph Road, Brownstown Township, MI 481883. | Dec. 11, 2002 ... | 260218 |
| Missouri: | | | | | |
| Greene (Case No. 00–07–676P) (FEMA Docket No. P7618). | Unincorporated Areas. | Oct. 9, 2002, Oct. 16, 2002, *Springfield News-Leader*. | The Honorable David Coonrod, Presiding Commissioner, County of Greene, 940 Boonville Avenue, Springfield, MO 65802. | Jan. 15, 2003 ... | 290782 |
| Jasper and Newton (Case No. 01–07–831P) (FEMA Docket No. P7618). | City of Joplin ..... | Oct. 4, 2002, Oct. 11, 2002, *The Joplin Globe*. | The Hon. Richard Russell, Mayor, City of Joplin, 1710 East 32nd Street, Joplin, MO 64804. | Jan. 10, 2003 ... | 290183 |
| St. Charles (Case No. 01–07–726P) (FEMA Docket No. P7616). | City of St. Peters .... | Aug. 21, 2002, Aug. 28, 2002, *St. Peters Journal*. | The Honorable Tom Brown, Mayor, City of St. Peters, 1 St. Peters Center Boulevard, St. Peters, MO 63376. | Nov. 27, 2002 ... | 290319 |
| New Mexico: | | | | | |
| Dona Ana (Case No. 02–06–1099P) (FEMA Docket No. P7616). | Unincorporated areas. | Aug. 22, 2002, Aug. 29, 2002, *Las Cruces Sun News*. | Mr. David R. King, Dona Ana, County Manager, County Managers Complex, 180 West Amador Avenue, Las Cruces, NM 88001. | Aug. 8, 2002 ..... | 350012 |
| Dona Ana (Case No. 02–06–1099P) (FEMA Docket No. P7616). | City of Las Cruces .. | Aug. 22, 2002, Aug. 29, 2002, *Las Cruces Sun News*. | The Honorable Ruben Smith, Mayor, City of Las Cruces, P.O. Box 2000, Las Cruces, NM 88004. | Aug. 8, 2002 ..... | 355332 |
| Ohio: | | | | | |
| Franklin and Delaware (Case No. 02–05–1027P) (FEMA Docket No. P7616). | City of Dublin ..... | Aug. 21, 2002, Aug. 28, 2002, *Dublin News*. | The Hon. Thomas McCash, Mayor, City of Dublin, 5200 Emerald Parkway, Dublin, OH 43017–1006. | Nov. 27, 2002 ... | 390673 |
| Franklin (Case No. 02–05–1027P) (FEMA Docket No. P7616). | Unincorporated areas. | Aug. 21, 2002, Aug. 28, 2002, *Dublin News*. | Mr. Dewey R. Stokes, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215. | Nov. 27, 2002 ... | 390167 |
| Franklin (Case No. 02–05–1849P) (FEMA Docket No. P7616). | Unincorporated areas. | Aug. 30, 2002, Sept. 6, 2002, *The Columbus Dispatch*. | Mr. Dewey R. Stokes, President, Franklin County Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215–6304. | Dec. 6, 2002 ..... | 390167 |
| Greene (Case No. 02–05–2322P) (FEMA Docket No. P7616). | Unincorporated areas. | Aug. 23, 2002, Aug. 30, 2002, *Xenia Daily Gazette*. | Mr. Stephen Stapleton, Greene County Administrator, 35 Greene Street, Xenia, OH 45385. | Nov. 29, 2002 ... | 390193 |
| Lucas (Case No. 02–05–2988P) (FEMA Docket No. P7616). | Village of Holland ... | Aug. 21, 2002, Aug. 28, 2002, *The Blade*. | The Hon. Michael Yunker, Mayor, Villlage of Holland, 1245 Clarion Avenue, Holland, OH 43528. | July 25, 2002 .... | 390659 |
| Montgomery (Case No. 02–05–1438P) (FEMA Docket No. P7616). | City of Kettering ..... | Aug. 30, 2002, Sept. 6, 2002, *Dayton Daily News*. | The Honorable Marilou Smith, Mayor, City of Kettering, 3600 Shroyer Road, Kettering, OH 45429. | Aug. 19, 2002 ... | 390412 |
| Greene (Case No. 02–05–2322P) (FEMA Docket No. P7616). | City of Xenia ..... | Aug. 23, 2002, Aug. 30, 2002, *Xenia Daily Gazette*. | The Honorable John T. Saraga, Mayor, City of Xenia, 101 N. Detroit Street, Xenia, OH 45385. | Nov. 29, 2002 ... | 390197 |
| Texas: | | | | | |
| Bastrop (Case No. 01–06–1169P) (FEMA Docket No. P7616). | Unincorporated areas. | Aug. 29, 2002, Sept. 5, 2002, *Bastrop Advertiser and County News*. | The Hon. Ronnie McDonald, Judge, Bastrop County, 804 Pecan Street, Bastrop, TX 78602. | Dec. 5, 2002, .... | 481193 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Bexar (Case No. 02–06–1263P) (FEMA Docket No. P7618). | Unincorporated areas. | Sept. 23, 2002, Sept. 30, 2002, *San Antonio Express News*. | The Hon. Cyndi Taylor Krier, Judge, Bexar County, 100 Dolorosa, Suite 101, San Antonio, TX 78205. | Oct. 14, 2002 ... | 480035 |
| Dallas (Case No. 01–06–1163P) (FEMA Docket No. P7618). | City of Dallas ..... | Sept. 13, 2002, Sept. 20, 2002, *Dallas Morning News*. | The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, City Hall, Dallas, TX 75201. | Dec. 20, 2002 ... | 480171 |
| Dallas (Case No. 01–06–1425P) (FEMA Docket No. P7616). | City of Dallas ..... | Aug. 30, 2002, Sept. 6, 2002, *Dallas Morning News*. | The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, City Hall, Dallas, TX 75201. | Dec. 6, 2002 ..... | 480171 |
| Denton (Case No. 02–06–355P) (FEMA Docket No. P7616). | City of Denton ..... | Aug. 23, 2002, Aug. 30, 2002, *Denton Record Chronicle*. | The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201. | Nov. 29, 2002 ... | 480194 |
| Denton (Case No. 01–06–1875P) (FEMA Docket No. P7616). | Unincorporated areas. | Aug. 23, 2002, Aug. 30, 2002, *Denton Record Chronicle*. | The Honorable Kirk Wilson, Judge, Denton County, Courthouse on the Square, 110 West Hickory Street, Denton, TX 76201. | Nov. 29, 2002 ... | 480774 |
| Fort Bend (Case No. 02–06–266P) (FEMA Docket No. P7618). | Unincorporated areas. | Sept. 4, 2002, Sept. 11, 2002, *Fort Bend Star*. | The Hon. James Adolphus, Judge, Fort Bend County, 301 Jackson Street, Suite 719, Richmond, TX 77469. | Aug. 22, 2002 ... | 480228 |
| Tarrant (Case No. 02–06–830P) (FEMA Docket No. P7616). | City of Fort Worth ... | Aug. 23, 2002, Aug. 30, 2002, *Fort Worth Star Telegram*. | The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | Nov. 29, 2002 ... | 480596 |
| Tarrant (Case No. 02–06–1073P) (FEMA Docket No. P7618). | City of Fort Worth ... | Sept. 26, 2002, Oct. 3, 2002, *Fort Worth Star Telegram*. | The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | Jan. 2, 2003 ..... | 480596 |
| Tarrant (Case No. 02–06–064P) (FEMA Docket No. P7618). | City of Forth Worth | Sept. 13, 2002, Sept. 20, 2002, *Fort Worth Star Telegram*. | The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | Aug. 30, 2002 ... | 480596 |
| Tarrant (Case No. 01–06–1571P) (FEMA Docket No. P7616). | City of Grapevine .... | Aug. 22, 2002, Aug. 29, 2002, *Grapevine Sun*. | The Honorable William Tate Mayor, Grapevine P.O. Box 95104, Grapevine, TX 76099. | July 29, 2002 .... | 480598 |
| Dallas (Case No. 02–06–1091P) (FEMA Docket No. P7618). | City of Irving ..... | Sept. 5, 2002, Sept. 12, 2002, *Irving Morning News*. | The Honorable Joe Putnam, Mayor, City of Irving, P.O. Box 152288, Irving, TX 75015. | Aug. 19, 2002 ... | 480180 |
| Dallas (Case No. 02–06–384P) (FEMA Docket No. P7618). | City of Irving ..... | Sept. 12, 2002, Sept. 19, 2002, *Irving Morning News*. | The Honorable Joe Putnam, Mayor, City of Irving, P.O. Box 152288, 825 West Irving Boulevard, Irving, Texas 75015. | Dec. 19, 2002 ... | 480180 |
| Dallas (Case No. 01–06–1088P) (FEMA Docket No. P7618). | City of Lancaster .... | Oct. 24, 2002, Oct. 31, 2002, *Lancaster Today*. | The Honorable Joe Tillotson, Mayor, City of Lancaster, P.O. Box 940, Lancaster, TX 75146. | Jan. 27, 2003 ... | 480182 |
| Denton (Case No. 02–06–731P) (FEMA Docket No. P7618). | City of Lewisville ..... | Sept. 25, 2002, Oct. 2, 2002, *Denton County Morning News*. | The Hon. Bobbie J. Mitchell, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, TX 75029. | Sept. 12, 2002 .. | 480195 |
| Montgomery (Case No. 01–06–1444P) (FEMA Docket No. P7618). | City of Magnolia ..... | Sept. 11, 2002, Sept. 18, 2002, *Magnolia Potpourri*. | The Hon. Frank Parker, III, Mayor, City of Magnolia, P.O Box 996, Magnolia, TX 77355. | Aug. 30, 2002 ... | 481261 |
| Dallas (Case No. 01–06–1230P) (FEMA Docket No. P7620). | City of Mesquite ..... | Nov. 7, 2002, Nov. 14, 2002, *Mesquite Morning News*. | The Hon. Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185. | Oct. 9, 2002 ..... | 485490 |
| Midland (Case No. 02–06–1417P) (FEMA Docket No. P7620). | City of Midland ..... | Nov. 12, 2002, Nov. 19, 2002, *Midland Reporter Telegram*. | The Hon. Michael J. Canon, Mayor, City of Midland, 300 North Loraine, P.O. Box 1152, Midland, TX 79702. | Nov. 6, 2002 ..... | 480477 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Midland (Case No. 02–06–1417P) (FEMA Docket No. P7620). | Unincorporated areas. | Nov. 12, 2002, Nov. 19, 2002, *Midland Reporter Telegram*. | The Hon. William C. Morrow, Judge, Midland County, County Courthouse, 200 West Wall Street, Midland, TX 79701. | Nov. 6, 2002 ..... | 481239 |
| Fort Bend (Case No. 02–06–266P) (FEMA Docket No. P7618). | City of Missouri City | Sept. 5, 2002, Sept. 12, 2002, *Fort Bend Mirror*. | The Honorable Allen Owen, Mayor, City of Missouri City, P.O. Box 666, Missouri City, TX 77459. | Aug. 22, 2002 ... | 480304 |
| Montgomery (Case No. 01–06–1444P) (FEMA Docket No. P7618). | Unincorporated Areas. | Sept. 11, 2002, Sept. 18, 2002, *The Courier*. | The Honorable Alan B. Sadler, Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, TX 77301. | Aug. 30, 2002 ... | 480483 |
| Tarrant (Case No. 02–06–830P) (FEMA Docket No. P7616). | City of Saginaw ..... | Aug. 23, 2002, Aug. 30, 2002, *Fort Worth Star Telegram*. | The Hon. Frankie Robbins, Mayor, City of Saginaw, 333 West McLeroy Boulevard, P.O. Box 79070, Saginaw, TX 76179. | Nov. 29, 2002 ... | 480610 |
| Bexar (Case No. 02–06–1263P) (FEMA Docket No. P7618). | City of San Antonio | Sept. 23, 2002, Sept. 30, 2002, *San Antonio Express News*. | The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283. | Sept. 13, 2002 .. | 480045 |
| Bexar (Case No. 02–06–2309P) (FEMA Docket No. P7618). | City of San Antonio | Oct. 15, 2002, Oct. 22, 2002, *San Antonio Express News*. | The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283. | Jan. 21, 2003 ... | 480045 |
| Bexar (Case No. 02–06–1679P) (FEMA Docket No. P7618). | City of San Antonio | Oct. 23, 2002, Oct. 30, 2002, *San Antonio Express News*. | The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283. | Jan. 29, 2003 ... | 480045 |
| Bexar (Case No. 02–06–2309P) (FEMA Docket No. P7618). | City of Shavano Park. | Oct. 15, 2002, Oct. 22, 2002, *San Antonio Express News*. | The Hon. Tommy Peyton, Mayor, City of Shavano Park, City Hall, 99 Saddletree Road, San Antonio, TX 78231. | Jan. 21, 2003 ... | 480047 |
| Tarrant (Case No. 02–06–1098P) (FEMA Docket No. P7618). | City of Southlake .... | Sept. 12, 2002, Sept. 19, 2002, *Fort Worth Star Telegram*. | The Honorable Rick Stacy, Mayor, City of Southlake, 1400 Main Street, Southlake, TX 76092. | Dec. 19, 2002 ... | 480612 |
| Fort Bend (Case No. 02–06–266P) (FEMA Docket No. P7618). | City of Sugar Land | Sept. 4, 2002, Sept. 11, 2002, *Fort Bend Star*. | The Honorable David Wallace, Mayor, City of Sugar Land, P.O. Box 110, Sugar Land, TX 77487. | Aug. 22, 2002 ... | 480234 |
| Tarrant (Case No. 02–06–830P) (FEMA Docket No. P7616). | Unicorporated Areas | Aug. 23, 2002, Aug. 30, 2002, *Fort Worth Star Telegram*. | The Hon. Tom Vandergriff, Judge, Tarrant County, 100 E. Weatherford, Fort Worth, TX 76179. | Nov. 29, 2002 ... | 480582 |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 9, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 03–12579 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

## Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

**ADDRESSES:** The final base flood elevations for each community are

available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

■ Accordingly, 44 CFR Part 67 is amended to read as follows:

## PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.11 [Amended]

■ 2.The tables published under the authority of § 67.11 are amended as follows:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) Modified ♦Elevation in feet (NAVD) Modified |
|---|---|---|---|---|
| MN ..... | Upper Sioux Community (Yellow Medicine County) (FEMA Docket No. 7621). | Minnesota ..... | ..... | *882 |
| Maps are available for inspection at the Office of the Tribal Council Secretary/FDPO Administrator, Upper Sioux Community Board of Trustees, Granite Falls, Minnesota. | | | | |

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 9, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 03–12581 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–04–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 03–1531, MB Docket No. 02–81, RM–10422]**

## Digital Television Broadcast Service; Bethlehem, PA

**AGENCY:** Federal Communications Commission.

**ACTION:** Correcting amendment.

**SUMMARY:** The Federal Communications Commission published in the **Federal Register** of March 6, 2003 (68 FR 10664), a document (DA 03–491) to change the DTV Table of Allotments to reflect the substitution of DTV channel 9 for DTV channel 59c at Bethlehem. However, DTV channel 59 was inadvertently published without the ''c'' designation. This document corrects that amendment contained in section 73.622(b) of the Commission's Rules.

**DATES:** Effective April 14, 2003.

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

**SUPPLEMENTARY INFORMATION:**

### Background

The FCC published a document in the **Federal Register** of March 6, 2003, (68 FR 10664) removing DTV channel 59 and adding DTV channel 9 at Bethlehem, Pennsylvania. DTV channel 59 was inadvertently published in lieu

of DTV channel 59c. This correction removes DTV channel 59c in lieu DTV channel 59 at Bethlehem.

**Need for Correction**

As published, the final regulations contain an error, which may prove to be misleading, and needs to be clarified.

**List of Subjects in 47 CFR Part 73**

Digital television broadcasting, Television.

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

## PART 73—[AMENDED]

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

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

**§ §73.622 [Amended]**

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania, is amended by removing DTV channel 59c at Bethlehem.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 03–12543 Filed 5–19–03; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 021122286–3036–02; I.D. 051403B]**

## Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the 2003 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), May 16, 2003, through 1200 hrs, A.l.t., June 29, 2003.

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

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

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003) for the second season, the period April 1, 2003, through 1200 hrs, A.l.t., June 29, 2003, is 300 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 2003 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, deep water flatfish, rex sole, arrowtooth flounder, and sablefish.

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

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the second seasonal apportionment of the 2003 Pacific halibut bycatch allowance, and therefore reduce the public's ability to use and enjoy the fishery resource.

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

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

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

Dated: May 14, 2003.

**Bruce C. Morehead,**

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

[FR Doc. 03–12634 Filed 5–15–03; 2:40 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 68, No. 97
Tuesday, May 20, 2003

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

**[Docket No. 02–032–2]**

**RIN 0579–AB48**

### Importation of Solid Wood Packing Material

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule and notice of public hearings.

**SUMMARY:** We are proposing to amend the regulations for the importation of unmanufactured wood articles to adopt an international standard entitled ''Guidelines for Regulating Wood Packaging Material in International Trade'' that was approved by the Interim Commission on Phytosanitary Measures of the International Plant Protection Convention on March 15, 2002. The standard calls for wood packaging material to be either heat treated or fumigated with methyl bromide, in accordance with the Guidelines, and marked with an approved international mark certifying treatment. We propose to adopt the IPPC Guidelines because they represent the current international standard determined to be necessary and effective for controlling pests in wood packaging material used in global trade, and because current United States requirements for wood packaging material are not fully effective, as shown by analyses of pest interceptions at ports that show an increase in pests associated with wood packaging material. This increase in pests was found in wood packaging material that does not meet the IPPC Guidelines (*e.g.*, wood packaging material from everywhere except China, which must already be treated due to past pest interceptions). There has been a decrease in pests associated with wood packaging material from China since we began requiring that material be treated prior to importation. This change would affect all persons using wood packaging material in connection with importing goods into the United States.

**DATES:** We will consider all comments that we receive on or before July 21, 2003. We will also consider comments made at public hearings to be held in Seattle, WA, on June 23, 2003; Long Beach, CA, on June 25, 2003; and Washington, DC, on June 27, 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. 02–032–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–032–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–032–2'' 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.*

Public hearings regarding this rule will be held at the following locations:

1. Seattle, WA: Renaissance Madison Hotel, 515 Madison Street, Seattle, WA.

2. Long Beach, CA: Hilton Long Beach, 701 W. Ocean Blvd., Long Beach, CA.

3. Washington, DC: United States Department of Agriculture, Jefferson Auditorium, South Building Wing 4, 1400 Independence Avenue SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ray Nosbaum, Senior Regulatory Coordinator, PPQ, APHIS, 4700 River Road Unit 131, Riverdale, MD 20737–1231; (301) 734–6280.

**SUPPLEMENTARY INFORMATION:**

### Public Hearings

We are advising the public that we are hosting three public hearings on this proposed rule. The first public hearing will be held in Seattle, WA, on Monday, June 23, 2003. The second public hearing will be held in Long Beach, CA, on Wednesday, June 25, 2003. The third public hearing will be held in Washington, DC, on Friday, June 27, 2003.

A representative of the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the hearing record. A transcript of the public hearings will be placed in the rulemaking record and will be available for public inspection.

The purpose of the hearings is to give interested persons an opportunity for presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearings, except to clarify or explain provisions of the proposed rule.

The public hearings will begin at 9 a.m. and are scheduled to end at 5 p.m., local time. The presiding officer may limit the time for each presentation so that all interested persons appearing at each hearing have an opportunity to participate. Each hearing may be terminated at any time if all persons desiring to speak have been heard.

Registration for the hearings may be accomplished by registering with the presiding officer between 8:30 a.m. and 9 a.m. on the day of the hearing. Persons who wish to speak at a hearing will be asked to sign in with their name and organization to establish a record for the hearing. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. Those who wish to form a panel to present

their views will be asked to provide the name of each member of the panel and the organizations the panel members represent.

Persons or panels wishing to speak at one or more of the public hearings may register in advance by phone or e-mail. Persons wishing to register by phone should call the Regulatory Analysis and Development voice mail at (301) 734–8138. Callers must leave a message clearly stating (1) the location of the hearing the registrant wishes to speak at, (2) the registrant's name and organization, and, if registering for a panel, (3) the name of each member of the panel and the organization each panel member represents. Persons wishing to register by e-mail must send an e-mail with the same information described above to *richard.r.kelly@usda.gov*. Please write ''Public Hearing Registration'' in the subject line of your e-mail. Advance registration for any hearing must be received by 3 p.m. on Thursday, June 19, 2003.

If you require special accommodations, such as a sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

## Background

Logs, lumber, and other unmanufactured wood articles imported into the United States pose a significant hazard of introducing plant pests, including pathogens, detrimental to agriculture and to natural, cultivated, and urban forest resources. The regulations in 7 CFR 319.40–1 through 319.40–11 (referred to below as the regulations) contain provisions to mitigate plant pest risks presented by the importation of logs, lumber, and other unmanufactured wood articles.

The Animal and Plant Health Inspection Service (APHIS) is proposing to amend the regulations to decrease the risk of solid wood packing material (SWPM) introducing plant pests into the United States. SWPM is defined in the regulations as ''[w]ood packing materials other than loose wood packing materials, used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.'' Introductions into the United States of exotic plant pests such as the pine shoot beetle and the Asian longhorned beetle have been linked to the importation of SWPM. These and other plant pests that are carried by some imported SWPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests.

The introduction of pests associated with SWPM is a worldwide problem.[1] Because SWPM is very often re-used, recycled or re-manufactured, the true origin of any piece of SWPM is difficult to determine and thus its phytosanitary status cannot be ascertained. This often precludes national plant protection organizations from conducting useful specific risk analyses focused on the pests associated with SWPM of a particular type or place of origin, and imposing particular mitigation measures based on the results of such analysis. For this reason, there is a need to develop globally accepted measures that may be applied to SWPM by all countries to practically eliminate the risk for most quarantine pests and significantly reduce the risk from other pests that may be associated with the SWPM.

Such issues are generally addressed under the World Trade Organization's Agreement on the Application of Sanitary and Phytosanitary Measures (1994, World Trade Organization, Geneva) (the Agreement). The Agreement fosters the use of harmonized sanitary and phytosanitary measures developed by international standards organizations. In the case of phytosanitary standards, the authorized standard-setting organization is the International Plant Protection Convention (IPPC). Article 3 of the Agreement states, ''To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist,'' except when Members opt to impose a higher level of sanitary or phytosanitary protection than the international standards provide. The same Article also states, ''Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.''

We propose to adopt the international standard[2] approved by the IPPC on March 15, 2002 (referred to below as the IPPC Guidelines).[3] The IPPC Guidelines were developed after the IPPC determined that worldwide, the movement of SWPM made of unprocessed raw wood is a pathway for the introduction and spread of a variety of pests (IPPC Guidelines, p. 5). The IPPC Guidelines list the major categories of these pests, and establish a heat treatment and a fumigation treatment determined to be effective against them (IPPC Guidelines, p. 10). As many of these pests have been associated with SWPM inspected at U.S. ports, we propose to adopt the IPPC Guidelines because they represent the current international standard determined to be necessary and effective for controlling pests in SWPM. The need to adopt the IPPC Guidelines is further supported by analysis of pest interceptions at ports that show an increase in dangerous pests associated with certain SWPM. This increase in pests was found in SWPM that does not meet the IPPC Guidelines (*e.g.*, SWPM from everywhere except China). There has been a decrease in pests associated with SWPM material from China since we began requiring that material be treated prior to importation.

Another reason to adopt the IPPC Guidelines at this time is that adopting them would simplify and standardize trade requirements. China, Canada, the European Union, and many other countries are preparing to implement the IPPC Guidelines requirements. Given the difficulty of identifying the source of SWPM and the recycling of SWPM in trade, successful reduction of the pest risk posed by SWPM requires all trading partners to take action on a similar timeline. Furthermore, if the United States does not do so, U.S. companies will need to comply with one set of SWPM requirements for goods exported from the United States and another set of requirements for goods imported into the United States. Companies engaged in both import and export would have particular difficulties

[1] Problems with pests associated with SWPM have also been addressed on a regional level, *e.g.*, when the North American Plant Protection Organization, acting on behalf of the United States, Canada, and Mexico, approved the document ''NAPPO Standards for Phytosanitary Measures: Import Requirements for Wood Dunnage and Other Wood Packing Materials into a NAPPO Member Country,'' The Secretariat of the North American Plant Protection Organization, Ottawa, August 12, 2001. Also, the three NAPPO countries have agreed to a target date of June 1, 2003, to implement the IPPC Guidelines among them; this announcement is on the NAPPO Web site at *http://www.nappo.org/Standards/Desicions-e.htm.*

[2] ''International Standards for Phytosanitary Measures: Guidelines for Regulating Wood Packaging Material in International Trade,'' Secretariat of the International Plant Protection Convention, Food and Agriculture Organization of the United Nations, Rome: 2002.

[3] Regarding ''guidelines'' vs. ''standards'': While the IPPC document refers to itself as ''Guidelines'' in the title, it refers to itself as a ''standard'' throughout its body. The distinction does not appear to be meaningful; *cf.* IPPC Convention, Art. 3, ''Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist * * *.''

in ensuring that their SWPM supply chain is sorted and routed for use for appropriate destinations. If the United States adopts the IPPC Guidelines, these companies would be able to use SWPM that complies with the Guidelines for both import and export purposes, leveling the trade playing field with regard to SWPM.

*Basis of the IPPC Guidelines*

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. The IPPC is placed under the authority of the Food and Agriculture Organization (FAO) of the United Nations, and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations, including APHIS, in cooperation with regional plant protection organizations, the Interim Commission on Phytosanitary Measures (ICPM), and the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1997 to update phytosanitary concepts and formalize the standard-setting structure within the IPPC. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18, 2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The eight-step process by which the IPPC develops new phytosanitary standards is described in detail in a notice APHIS published in the **Federal Register** on August 23, 2002 (Docket No. 02–051–1, 67 FR 54615–54621). APHIS technical experts were deeply involved throughout the process used to develop the IPPC Guidelines for wood packaging materials. A team of international experts studied all published data available at the time and recommended the treatment schedules that are in the IPPC Guidelines. Scientific studies evaluated during this process documented the risks associated with SWPM, the need to treat it, and the efficacy of the treatments included in the IPPC Guidelines (see, *e.g., http://www.aphis.usda.gov/ppq/swp/heat_treatment.pdf*).

*Terms Used in the IPPC Guidelines and in APHIS Regulations*

The IPPC Guidelines employ the term ''wood packaging material,'' which the Guidelines define as ''wood or wood products (excluding paper products) used in supporting, protecting or carrying a commodity (includes dunnage).'' Later, in a discussion of issues, the IPPC Guidelines state that wood packaging material includes ''coniferous and non-coniferous raw wood packaging material that may serve as a pathway for plant pests posing a threat mainly to living trees. They cover wood packaging material such as pallets, dunnage, crating, packing blocks, drums, cases, load boards, pallet collars, and skids * * * Wood packaging made wholly of wood-based products such as plywood, particle board, oriented strand board or veneer that have been created using glue, heat and pressure or a combination thereof should be considered sufficiently processed to have eliminated the risk associated with the raw wood. It is unlikely to be infested by raw wood pests during its use and therefore should not be regulated for these pests. Wood packaging material such as veneer peeler cores, sawdust, wood wool, and shavings, and raw wood cut into thin pieces may not be pathways for introduction of quarantine pests and should not be regulated unless technically justified.'' APHIS uses the term ''solid wood packing material'' in its regulations to cover the same class of materials.

In this document, and in our regulations, we have elected to continue using the term solid wood packing material (SWPM) rather than the IPPC term wood packaging material. We do so for reasons of enforcement and history. Unlike the IPPC Guidelines, our regulations must be enforced daily in a wide variety of situations, dealing with many regulated parties. To enforce our regulations, we need to precisely define terms in a manner consistent with the entire body of our regulations. Our definition of SWPM meets these needs. Also, for over 10 years, APHIS has published a large number of informational guides, agreements, certificates, and other documents employing the SWPM term, and we believe it would be confusing rather than helpful to change to another term.

*The IPPC Guidelines Compared to Current APHIS Requirements*

The IPPC Guidelines require SWPM to be heat treated or fumigated with methyl bromide. These two treatments are efficacious in treating the target pests named in the IPPC Guidelines, *i.e.*, bark beetles, wood borers, and certain nematodes. These pests represent over 95 percent of all of the pests that APHIS intercepted in association with imported SWPM in 2000 and 2001.

Target Pest Groups of the IPPC Guidelines

Insects

Anobiidae
Bostrichidae
Buprestidae
Cerambycidae
Curculionidae
Isoptera
Lyctidae (with some exceptions for HT)
Oedemeridae
Scolytidae
Siricidae
Nematodes

*Bursaphelenchus xylophilus*

Currently, the regulations allow, subject to certain restrictions, SWPM to be imported into the United States from any country. In § 319.40–3, paragraph (b)(1) provides that bark-free SWPM used with nonregulated wood articles is subject to inspection upon arrival, but treatment is not required. Paragraph (b)(4) of § 319.40–3 provides that bark-free pallets moved as cargo are subject to inspection upon arrival, but, in general, treatment is not required. Paragraphs (b)(2) and (b)(3) of § 319.40–3 require, in general, that bark-free SWPM used with regulated wood articles or SWPM not free of bark be heat treated, fumigated, or treated with preservatives. Likewise, as of the end of 1998, SWPM from China, including Hong Kong, is subject to stricter regulation in that it also must be heat treated, fumigated, or treated with preservatives, in accordance with § 319.40–5, paragraphs (g) and (i). The treatment schedules for SWPM in the current regulations have an effectiveness against target pests for SWPM that is very similar to that provided by the treatments in the IPPC Guidelines. We are proposing to adopt the IPPC Guidelines in lieu of all the current requirements for SWPM described in this paragraph.

The treatments authorized by the IPPC Guidelines include a heat treatment schedule and a methyl bromide fumigation schedule. The IPPC Guidelines also acknowledge that other treatments currently under laboratory evaluation for their effectiveness may be added to the IPPC Guidelines in the future. These possible additional treatments include fumigation with chemicals other than methyl bromide, chemical pressure impregnation,

irradiation, and treatment in controlled atmosphere.

The IPPC Guidelines state, with respect to heat treatment, that SWPM should be heated in accordance with a specific time-temperature schedule that achieves a minimum wood core temperature of 56 °C for a minimum of 30 minutes. It notes that kiln-drying, chemical pressure impregnation (CPI), or other treatments may be considered heat treatments to the extent that these meet the heat treatment specifications. For example, CPI may meet the specification through the use of steam, hot water, or dry heat.

The IPPC Guidelines state, with respect to methyl bromide fumigation, that the SWPM should be fumigated in an enclosed area for at least 16 hours at the following dosage, stated in terms of grams of methyl bromide per cubic meter of the enclosure being fumigated:

| Temperature | Initial dose (g/m³) | Minimum required concentration (g/m³) after: | | | |
|---|---|---|---|---|---|
| | | 0.5 hrs. | 2 hrs. | 4 hrs. | 16 hrs. |
| 21 °C or above | 48 | 36 | 24 | 17 | 14 |
| 16 °C or above | 56 | 42 | 28 | 20 | 17 |
| 11 °C or above | 64 | 48 | 32 | 22 | 19 |

The methyl bromide fumigation schedule in the IPPC Guidelines parallels, though it is not identical to, the schedules APHIS requires for fumigation of SWPM (*e.g.*, for shipments from China). The heat treatment schedule in the IPPC Guidelines has a lesser time-temperature requirement than the existing APHIS heat treatment schedule in § 319.40–7(c), which requires maintaining a core temperature of at least 71.1 °C for a minimum of 75 minutes. However, it is generally acknowledged, and supported by research discussed below, that the APHIS heat treatment schedule in § 319.40–7(c) exceeds the treatment level necessary to control the IPPC target pests in SWPM. The time-temperature combination in § 319.40–7(c) was set to ensure destruction of a wide variety of pests and pathogens, some of which are not target pests for SWPM, in wood articles of a variety of sizes and shapes, some of which, being thicker and larger, require more stringent treatments than does SWPM. It is not certain whether the heat and methyl bromide treatments we are proposing may provide less mitigation of all possible pest risks than the more stringent treatments currently required for SWPM from China. The proposed treatments should be just as effective with regard to the target pests identified in this rule and in the IPPC Guidelines. Approximately 95 percent of pests our inspectors intercept on shipments worldwide are pests on the IPPC target pest list, and research demonstrates the IPPC standard treatments are effective against these pests. For the remaining 5 percent of pests we intercept—primarily defoliators and rarely sapsucking insects, pathogens, or nematodes—limited data supports a conclusion that most are likely to be effectively mitigated by the treatments in the IPPC standard. If there are any remaining pests not effectively mitigated by the IPPC standard treatments, we do not have conclusive scientific evidence that the treatments currently required for SWPM from China would be more effective against them than the IPPC standard treatments. Such a conclusion would be conjectural, that the additional heat treatment or fumigation would be enough to destroy the pest. Instead of retaining the China treatments merely because they require higher doses that might be effective against pests with unknown tolerances, APHIS intends to develop more information about such pests and address them when we can verify effective treatment. As stated in the IPPC Guidelines, APHIS or other nations' plant protection agencies may promulgate additional rules as needed to address additional pest risks on a case-by-case basis.

In addition to describing heat and methyl bromide treatment schedules and an approved international mark for SWPM, the IPPC Guidelines require that a country's national plant protection organization develop procedures to ensure that SWPM treated and marked in that country for export complies with the IPPC Guidelines. Countries must monitor the SWPM certification and marking systems that verify compliance and must establish procedures to inspect, register or accredit, and audit commercial companies that apply the SWPM treatments.

*Risks to U.S. Resources, Recent Pest Interceptions, and Other Data Supporting Adoption of the IPPC Guidelines*

There is worldwide consensus among national plant protection organizations that pest interceptions associated with SWPM indicate a serious problem in which the movement of certain dangerous pests is not sufficiently controlled by current restrictions on SWPM. There is ample data indicating that the United States is at particular risk with regard to this problem. For many years, pests associated with SWPM, including highly destructive wood borers and beetles, have been intercepted at U.S. ports. Pests of these types are often well-concealed inside SWPM, in larval forms or dormant stages that increase their survival potential. These pests may easily survive movement to the final destination or to cargo redistribution sites, many of which are vulnerable, heavily forested regions. About one-third of the land area of the United States is forest land, and there are millions of acres of urban, suburban, and ornamental trees as well. There are many areas where the climate, tree species, and lack of natural predators would allow introduced pests to flourish and become established.

One confirmation of the SWPM pest problem can be seen using an APHIS database, the Port Information Network (PIN–309), which records interceptions of quarantine pests [4] found in cargo arriving at United States ports. These reports of interceptions are based on sampling inspections conducted by APHIS inspectors at U.S. ports. For many years the PIN–309 reports have recorded interceptions in imported SWPM of the types of pests the IPPC Guidelines were developed to control. In recent years PIN–309 data has shown increasing levels of pests of concern, in addition to recording evidence that the treatments contained in the IPPC Guidelines are effective when they are applied.

From 1996 through 1998, PIN–309 reported [5] an average of 402 live pests

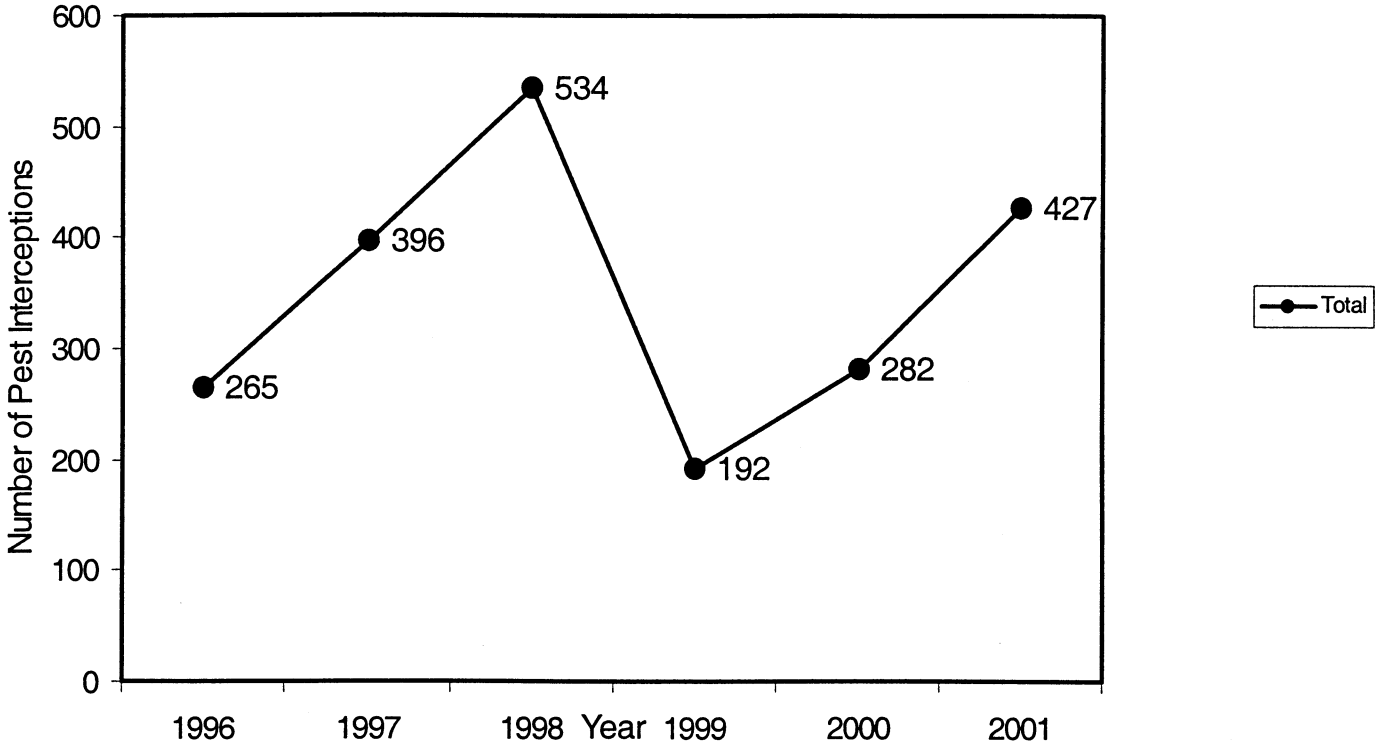
[4] "Quarantine pest": A pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. (FAO, 1990; revised FAO, 1995; IPPC, 1997).

[5] The scope and limits of PIN–309 data suggest that many more pests associated with SWPM went unreported. First, PIN–309 reports are made by inspectors, who inspect less than 1 percent of the more than 4 million wood pallets and other SWPM

Continued

per year associated with SWPM were intercepted at U.S. ports of entry; of these, 156, or 39 percent, were from China. Starting at the end of 1998, APHIS began requiring that SWPM from China be heat treated, fumigated, or pressure treated. This caused a marked decline in pest interceptions associated with SWPM from China, but interceptions from other countries have increased. For 2000–2001, an average of 355 pests per year associated with SWPM were intercepted at U.S. ports of entry; of these, 24, or 7 percent, were from China.

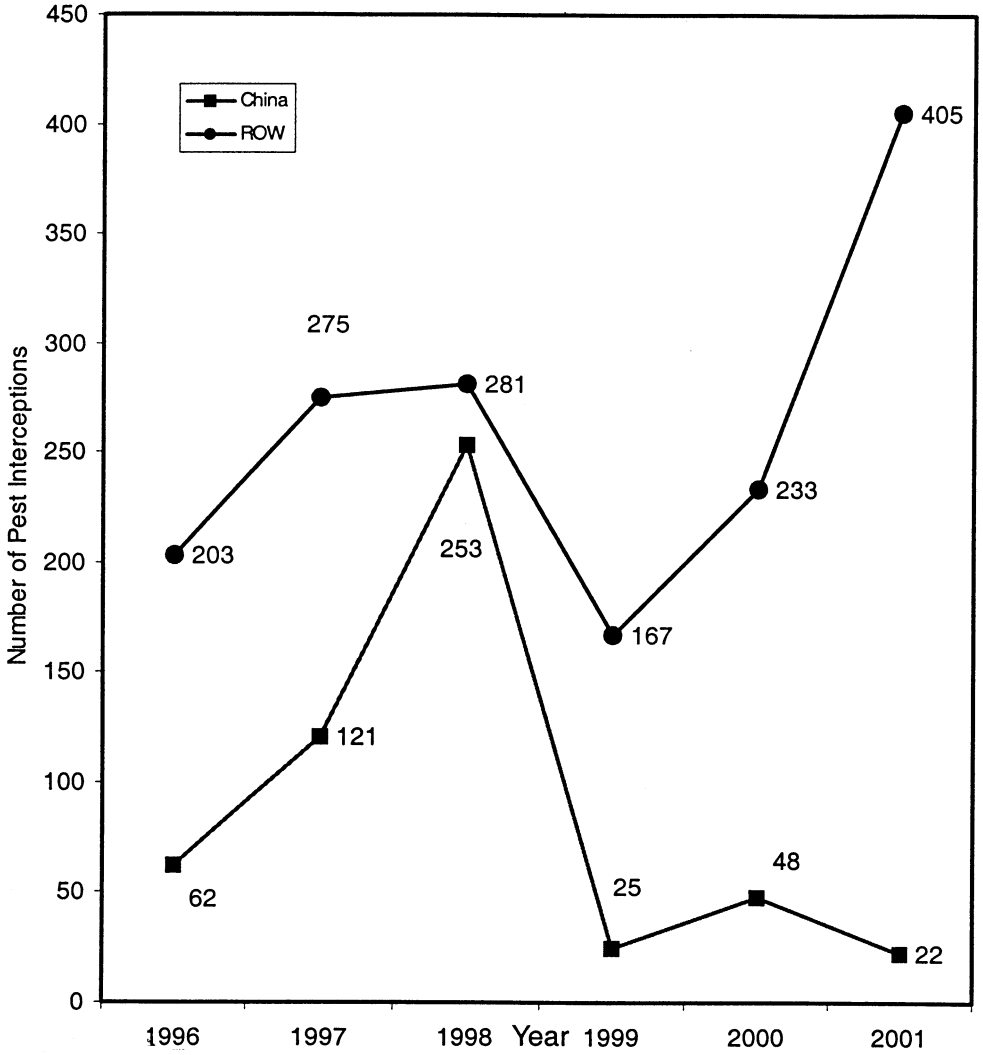
Chart 1. Interceptions of pests associated with Solid Wood Packaging Materials (1996 - 2001) based on the PIN-309 (Pest Interception Network database, USDA / APHIS).




If we subtract the China data from the PIN–309 reports, there was an average of 246 interceptions associated with SWPM from the rest of the world (ROW) each year from 1996–1998; this has risen to an average of 331 for each year from 2000–2001. APHIS believes that the increase in pest interceptions associated with ROW shipments is due to a real increase in pests associated with them, probably due to increased volume of trade that required increased sources of SWPM, causing shippers to use SWPM of lesser quality that is more likely to have pests associated with it. In discussions with APHIS, other countries have also indicated concern that increased trade has lead to use of riskier SWPM, and have endorsed the IPPC Guidelines as a means to address this phenomenon.

articles imported each year. Second, usually when inspectors find the first actionable pest in a shipment, they order treatment or re-export; they do not inspect the remainder of the shipment for more pests, which therefore are not recorded in PIN–309.

Chart 2. Interceptions of pests associated with Solid Wood Packaging Materials (1996 - 2001) from China versus Rest of the World (ROW) based on the PIN-309 (Pest Interception Network database, USDA/APHIS)




The types of pests intercepted include many that could cause significant damage if established. They included Coleoptera: Scolytidae (bark beetles); Hemiptera: Heteroptera, Coleoptera: Buprestidae, and Cerambycidae, (wood borers). Some pests had already moved beyond ports of entry when found; *Hylurgops palliatus,* a Palearctic bark beetle, was found beyond the port in Erie, PA, in May and June 2001, and *Hylurgus ligniperda Fabricus,* a red haired pine bark beetle, was found on a Christmas tree plantation in Rochester, NY, in November 2000. These two bark beetles were likely introduced into the United States with SWPM from Europe.

Many of these pests have the potential to cause damage comparable to that demonstrated by other recent introductions, *e.g.*, the Asian longhorned beetle (ALB) and the pine shoot beetle (PSB). The ALB was discovered in New York in 1996 and in Illinois in 1998, and since then APHIS has spent over $50 million on surveys, destruction and replacement of infested trees, treatment of surrounding trees, and other control activities. The State and local governments of Illinois and New York together have spent approximately $9 million. While containment efforts are expected to succeed, if they fail, ALB could devastate forests covering more than 100 million acres—the maple-dominated forests stretching from New England to the Midwest, with additional range in Canada; and the aspens of the Great Lakes region, central Canada, and the Rocky Mountains. APHIS has also spent millions of dollars to control the PSB since its discovery near Cleveland, OH, in 1992, after which it spread to nine Midwestern and Eastern States, as well as Ontario. It is continuing to spread to new areas within some affected States, and may spread to additional States. One recent study [6] estimated the value of urban trees at risk from ALB in nine cities. The resources at risk ranged from $72 million for Jersey City, NJ to $2.3 billion for New York City.

Another recent example of a pest apparently introduced through SWPM movement is the emerald ash borer. This Buprestid beetle was recently discovered feeding on ash (*Fraxinus* sp.) trees in southeastern Michigan; it was positively identified in July 2002 as *Agrilus planipennis* Fairmaire, an insect that is indigenous to Asia, with large populations in ash forests in China and eastern Russia. Evidence suggests that *A. planipennis* has been established in

[6] Nowak, David, J., Judith E. Pasek, Ronald A. Sequeira, Daniel E. Crane, and Victor C. Mastro, 2001. ''Potential Effect of Anaplophora glabripennis (Coleoptera:Cerambycidae) on Urban Trees in the U.S.'' Journal of Economic Entomology 94(1): 116–122 (2001).

Michigan for at least 5 years. The State of Michigan has imposed a quarantine to restrict movement of ash trees, firewood, nursery stock, and other articles that could spread the pest to new areas. Surveys to determine the extent of the infested area are underway.

The emerald ash borer attacks green, black and white ash trees, which are widely planted shade trees in the Midwest. It frequently kills nearly all the ash trees in areas where it lacks natural predators. The insect's larvae tunnel under the bark in late summer and fall, disrupting the phloem layer and often causing death within 2 to 3 years.

To control these substantial, recently analyzed pest risks, we propose to adopt the IPPC Guidelines. Taking this action would promptly address a weakness in our current regulations and improve protection of our natural and agricultural wood resources. It would also make U.S. SWPM requirements consistent with those of our major trading partners, who intend to adopt the IPPC Guidelines soon.

*Efficacy of the IPPC Guidelines Treatments*

The IPPC standard-setting process, discussed earlier, established the efficacy of the treatment standards recommended by the IPPC Guidelines. A great deal of research also supports the effectiveness of the treatments in the IPPC Guidelines for controlling risks associated with target pests than can move with SWPM.

*Evidence of Effectiveness of the Heat Treatment in the IPPC Guidelines*

The Asian longhorned beetle (*Anoplophora glabripennis*) or ALB is often used as a representative species for detailed assessment of the effectiveness of heat treatment. Recently completed and ongoing studies on both ALB and *Monochamus* species (a species of similar size and life cycle used as a surrogate for ALB) have confirmed that heat treatment to a 56 °C core temperature for 30 minutes is 100 percent effective against ALB larvae in wood.

Early experiments on heat treatment to a 56 °C core temperature for 30 minutes focused on eradication of pinewood nematode (Dwinell 1995, 1997). Dwinell (1997) cites a trilateral study involving Canada, the United States, and the European Union (EOLAS, 1991), which concluded that heat treating unseasoned lumber to a core temperature of 56 °C for 30 minutes eradicates the pinewood nematode and pine sawyer beetles.

Heating lumber from many species of wood at a core temperature of 56 °C for 30 minutes eradicated the pinewood nematode and pine sawyer beetles (Family *Cerambycidae: Monochamus*) (USDA, 1994). The genus *Monochamus* is a host of the pinewood nematode.

Pine sawyer beetle, *Monochamus* spp., belongs to the Family *Cerambycidae,* the same family that contains the ALB. Dwinell (1997) also indicated that heating infested Virginia pine logs to a core temperature of 53 °C for 30 minutes killed all pine sawyer beetles and all pine wood nematodes.

*Evidence of Effectiveness of the Methyl Bromide Fumigation Treatment in the IPPC Guidelines*

There are differences between the methyl bromide dosages over time required by the IPPC Guidelines and those currently required by the APHIS Plant Protection and Quarantine Treatment Manual. The dosage the Treatment Manual requires to be maintained over a 16-hour period is consistently higher than that required in the IPPC Guidelines. However, both treatment schedules effectively destroy the target pests for SWPM.

The U.S. Department of Agriculture (USDA), in collaboration with China, performed studies of methyl bromide fumigation of the Asian longhorned beetle that demonstrated 100 percent mortality of ALB larvae and pupae (Mack, 2002 per. comm). These studies used 10 cm square by 1.15 meter long wood timbers of *Populus* spp. exposed to methyl bromide for 24 hours at four concentration-temperature combinations: 80 mg/l @ 4.4 °C; 64 mg/l @ 10.0 °C; 56 mg/l @ 15.6 °C; and 48 mg/l @ 21.1 °C. In all cases, 100 percent mortality of ALB larvae and pupae was observed. The methyl bromide dose in these studies was greater than the one in the IPPC Guidelines. However, a prediction of the level of mortality of ALB using a Polo Probit 9 computer routine (Robertson 1997) indicated that 99.714 percent of ALB larvae would be killed after 16 hours at 15.6 °C with a cumulative CT (concentration x time) of 347. This is very close to the IPPC standard of a cumulative CT of 388 at 16 °C and 16 hours exposure; it is considered biologically equivalent. At 21.1 °C at 16 hours exposure and a cumulative CT of 293 (*i.e.*, the IPPC Standard), the predicted mortality level using the Polo Probit 9 computer routine (Robertson 1997) was 99.984 percent. Experiments by USDA at lower temperatures (*e.g.*, at 11 °C) confirm the effectiveness of the full range of optional IPPC temperature levels.

Also, although the above studies employed a methyl bromide dose greater than the IPPC Guidelines, the experiments were performed using a ''most risk scenario.'' For example, the wood was in larger pieces than is typical of SWPM, and was green wood, with a much higher moisture content than typical SWPM. Increased moisture and size both cause significant resistance to fumigant penetration. Also, in these studies, only wood was fumigated in the chamber, while most SWPM fumigations consist of about 35 percent SWPM and 65 percent cargo. The cargo is usually non-sorbtive materials, which increases the exposure of the SWPM to methyl bromide and increases the effectiveness of the treatment. These experiments provide evidence that fumigation with methyl bromide over the IPPC temperature and dosage ranges is effective against ALB in wood (Barak, 2002 per. comm). Other experimental evidence includes McMullen (1952), Michelsen (1964), Hanula and Berisford (1982), and Yu *et al.* (1984), among others.

*Proposed Changes to the Regulations to Adopt the IPPC Guidelines*

In order to incorporate the IPPC Guidelines into our regulations, we propose to amend ''Subpart—Logs, Lumber, and Other Unmanufactured Wood Articles'' (7 CFR 319.40–1 through 319.40–11), as follows.

We do not propose to make any changes in the definitions in § 319.40–1. The definition of *solid wood packing material* would remain unchanged, and SWPM would continue to be included in the definition of *regulated article.* This means that SWPM, except for types that have received more than primary processing (*e.g.*, plywood, particle board, oriented strand board, veneer, or other processed types of SWPM), would continue to be subject to the regulations.

We do not propose to make any changes to § 319.40–3(a), which exempts SWPM (and other regulated articles) from Canada and border States in Mexico adjacent to the United States from most of the requirements of the regulations.[7] The Canadian exemption

[7] On June 11, 1999, APHIS published a proposed rule in the **Federal Register** (Docket No. 98–054–1, 64 FR 31512–31518) to eliminate this exemption for many types of regulated articles, including SWPM, from Mexican border States. This proposal was based on a recent pest risk assessment that challenged the premise that, because forests in the United States share a common forested boundary with adjacent States in Mexico, the two countries' forests share, to a reasonable degree, the same forest pests. The pest risk assessment concluded that a significant pest risk exists in the movement of raw wood material into the United States from the adjacent States of Mexico, because certain forests in

exists because there are no significant pests associated with Canadian-origin SWPM. There has been some concern that SWPM from other countries imported into Canada could harbor pests, and could then be moved to the United States, spreading pests. However, Canada has signed an agreement to implement regulations in the near future requiring that all SWPM imported into Canada meet the conditions of the IPPC Guidelines. Also, heat treatment of pallets is rapidly becoming a standard throughout North America, and we expect that even before Canada formally complies with the IPPC Guidelines, a substantial portion of the wood pallets and wood crating imported from Canada will meet the provisions of the IPPC Guidelines.

We propose to make substantial changes to § 319.40–3(b), which sets forth the conditions under which SWPM may be imported under general permit. Currently, § 319.40–3(b) imposes varying restrictions on imported SWPM based on whether it is free of bark or not; whether it is used to pack regulated or nonregulated articles; and whether it is in actual use as packing or is moved as cargo. It appears that these distinctions would be unnecessary under the IPPC Guidelines, where all SWPM would be heat treated or fumigated with methyl bromide, and marked with an official mark to document the treatment. Therefore, we propose to replace § 319.40–3(b) with the following requirements.

SWPM, whether in actual use as packing for regulated or nonregulated articles or imported as cargo, may be imported into the United States under a general permit in accordance with the following conditions:

(1) The SWPM must have been:

• Heat treated to achieve a minimum wood core temperature of 56 °C for a minimum of 30 minutes. Such treatment may employ kiln-drying, chemical pressure impregnation, or other treatments that achieve this specification through the use of steam, hot water, or dry heat; or

• Fumigated with methyl bromide in an enclosed area for at least 16 hours at the following dosage, stated in terms of grams of methyl bromide per cubic meter of the enclosure being fumigated:

| Temperature | Initial dose (g/m$^3$) | Minimum required concentration (g/m$^3$) after: | | | |
|---|---|---|---|---|---|
| | | 0.5 hrs. | 2 hrs. | 4 hrs. | 16 hrs. |
| 21 °C or above | 48 | 36 | 24 | 17 | 14 |
| 16 °C or above | 56 | 42 | 28 | 20 | 17 |
| 11 °C or above | 64 | 48 | 32 | 22 | 19 |

• Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with label instructions approved by the U.S. Environmental Protection Agency. As noted in other APHIS regulations (*e.g.*, those for importing SWPM from China), when articles are fumigated, the articles must be aerated afterward to ensure that the articles are safe for handling, storage, and transportation. Aeration is required by the Environmental Protection Agency (EPA) in EPA-approved label instructions for all fumigants utilized pursuant to the regulations. Also, Occupational Safety and Health Administration (OSHA) regulations contained in title 29 of the Code of Federal Regulations require employers of cargo handlers to determine that the concentration of fumigants is below the level specified as hazardous before the cargo is loaded or discharged.

(2) The SWPM must be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark that indicates that the article has been treated as required. The mark must be approved by the International Plant Protection Convention in its International Standards for Phytosanitary Measures to certify that wood packaging material has been subjected to an approved measure, and must include a unique graphic symbol, the ISO two-letter country code for the country that produced the SWPM, a unique number assigned by the national plant protection agency of that country to the producer of the SWPM, and an abbreviation disclosing the type of treatment (*e.g.*, HT for heat treatment or MB for methyl bromide fumigation).

Importation under a general permit means that no paperwork, certificate, or importer document needs to accompany the SWPM. The mark required by the regulations would be applied by treatment facilities treating SWPM, and the contents of the mark (*i.e.*, the country and producer codes) would allow APHIS to trace SWPM back to its producer if necessary—for example, if APHIS finds that SWPM is not treated properly. We propose that the mark should be applied ''preferably on at least two opposite sides of the article'' because multiple marks would make inspection and enforcement easier and reduce the need to shift cargo in order to see marks. While a single mark would meet the minimum legal requirement, shippers may want to use SWPM with multiple marks to speed the inspection and clearance of their cargo.

The ''unique graphic symbol'' portion of this mark is not available at this time, but the IPPC should have approved such a symbol by the time this action reaches the final rule stage. The IPPC Guidelines contain such a symbol, but its use has been suspended because the Food and Agriculture Organization has not been able to legally protect the symbol for use according to the IPPC Guidelines. Legal registration of a substitute symbol is underway.

We are proposing that APHIS inspectors at the port of first arrival could order the immediate reexport of SWPM articles that arrive without the mark required by § 319.40–3(b)(2) that indicates required treatment. In most cases involving SWPM that is not properly marked, APHIS would order such shipments to be immediately reexported, because it is not practical to treat large volumes of SWPM after arrival. Not only are the facilities for such treatment lacking, but the untreated SWPM would represent an unacceptable pest risk while it is in storage at a port awaiting treatment. Therefore, we propose to specifically authorize inspectors to order the immediate reexport of unmarked SWPM. In some cases it would also be necessary to order the reexport of the cargo associated with the SWPM, although in most cases the cargo could be separated from the SWPM at the port and moved to its destination under safeguards—with the importer charged for the costs of these services. It would

these Mexican States should be viewed as biological islands containing their own unique combination of forest pests, not as an extension of the U.S. forest ecosystem. APHIS has not yet taken final action on this proposal.

be necessary to order the reexport of the cargo as well as the SWPM associated in cases where it is impossible to safely separate cargo from SWPM without substantial risk that pests would be spread during the process, or when pests would likely move with the cargo even after it is separated from the SWPM. This authority would be in addition to the authority inspectors already have in accordance with § 319.40–9 to inspect regulated articles, order their cleaning or treatment, and refuse them entry under certain conditions.

We are proposing special conditions for SWPM used by the Department of Defense (DOD) to move material from foreign locations into the United States. DOD often moves material in SWPM fashioned by its own woodworkers, rather than SWPM produced at the type of facilities that produce and treat SWPM for general commercial use. Also, DOD must often produce unusual or unique SWPM to safely pack its material. For reasons of security, practicality, and timeliness, it would be inappropriate to require DOD to use only SWPM that was produced and treated commercially and marked as meeting the IPPC Guidelines. Instead, we propose that SWPM used by DOD must meet the heat treatment or fumigation requirements of the IPPC Guidelines, but need not bear the proposed mark. We believe that this requirement will be as effective as the IPPC Guidelines with regard to SWPM used by DOD. While we do not propose to require a marking on such DOD SWPM, we would employ APHIS inspectors who already work in concert with DOD to monitor their use of SWPM and ensure that it is properly heat treated or fumigated.

In § 319.40–5, ''Importation and entry requirements for specified articles,'' we propose to remove paragraphs (g) through (k). This would remove all of the requirements established in 1998 and 1999 for importation of SWPM from the People's Republic of China, including Hong Kong, since the new requirements for complying with the IPPC Guidelines would apply to the People's Republic of China, including Hong Kong, as well as the rest of the world.

Finally, current § 319.40–9 describes inspection and other requirements at the port of first arrival. This proposal would not change this section, but it should be noted that this section has implications for anyone who imports SWPM that has not been properly treated and marked in accordance with § 319.40–3(b) of this proposed rule. APHIS inspectors at ports would examine SWPM for the IPPC-approved international mark required by the regulations. In accordance with the IPPC Guidelines, each national plant protection organization is expected to develop procedures to ensure that SWPM treated and marked in each country complies with the IPPC Guidelines. Therefore, the international mark is, in effect, a certificate verifying proper treatment. Persons who forge, alter, or fraudulently use the mark would be subject to administrative or criminal penalties.

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**Executive Order 12866 and Regulatory Flexibility Act**

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for the changes in SWPM import requirements proposed in this document. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act. A copy of the full economic analysis is available for review at the location listed in the **ADDRESSES** section at the beginning of this document, or on the Internet at *http://www.aphis.usda.gov/ppq/swp/*.

We do not have enough data for a comprehensive analysis of the economic effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities who may incur benefits or costs from implementation of this proposed rule and the economic impact of those benefits or costs.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of injurious plant pests.

This analysis evaluates a proposed rule that would adopt the International Plant Protection Convention (IPPC) standards on wood packaging materials, which are guidelines on globally accepted measures that may be applied to solid wood packing material (SWPM) to reduce the entry of pests via this pathway. The IPPC guidelines require SWPM to be heat treated at 56 °C for 30 minutes, or fumigated with methyl bromide.

We believe it is appropriate and necessary to adopt the IPPC Guidelines because they were developed as an international standard to control pests associated with SWPM. The types of

pests the IPPC Guidelines were developed to control have been intercepted at U.S. ports for many years, and pose significant risks to U.S. resources. Recent interceptions of pests at ports of entry show a steady increase in serious pests associated with SWPM from everywhere except China, whose SWPM must already be treated due to past pest interceptions. If left unchecked, pests imported with SWPM have the potential to cause significant economic damage to the agricultural and forest resources of the United States. The damage they cause could be similar in magnitude to the recent introduction of the Asian long-horned beetle (ALB) *Anaplophora glabripennis* (Coleoptera: Cerambycidae). Our regulations have already been changed to prevent further introductions of ALB from China, but adopting the IPPC guidelines could prevent the introduction of ALB or similar wood borers from other parts of the world, as well as prevent the introduction of other types of pests such as woodwasps and bark beetles. Imposing the IPPC guidelines' treatment and other requirements to prevent these introductions would yield net benefits. The benefits (avoided losses) that can be gained by preventing introduction of these pest types are discussed below. The actual magnitude of the benefits cannot be definitively ascertained, but they are likely to be much larger than the associated costs.

As an indicator of the damage ALB or similar wood borers could cause if introduced again in the future, consider the costs of the ALB introduction from China. The ALB, first discovered in New York City in 1996 and in Chicago, Illinois in 1998, was most likely introduced on wood packing material from China. The present value of urban trees at risk in the two affected cities is estimated at $59 million over some 50 years. About $6 million of urban trees have been destroyed due to pest infestation and eradication efforts since the introduction of ALB. So far, APHIS and State and local governments have spent over $59 million in eradicating the pest in the two localities. If only New York City and Chicago were considered, it would appear that the current eradication program has yielded a net loss of about $6 million (spending $59 million in control activities to save $53 million in resources). However, the eradication and quarantine activities are also the reason the pest has been confined to the two cities where it was initially detected. The potential damages from ALB spread to other areas can be gleaned from the Nowak *et al.* study that estimated losses to seven other cities. The present value of damage to urban trees in Baltimore City alone, not allowing for intervention, was estimated to be $399 million. Additionally, without governmental intervention, forest resources would also be at risk.

Wood borers such as ALB could cause the most damage of all types of pests associated with SWPM, but we have also projected that other types of pests could cause substantial damage. These include the Sirex woodwasp (Family: Siricidae) and the Eurasian spruce bark beetle (Family: Scolytidae). Projections of physical damages that can be caused by these types of pests range up to $48—$607 million and $208 million, respectively. Perhaps the greatest devastation posed by these pests that cannot be fully captured monetarily is their potential to cause irreversible loss to native tree species and consequential alterations to the environment and ecosystem.

The recent introduction of the emerald ash borer (EAB), Agrilus planipennis (Coleoptera: Buprestidae) a pest of ash trees, in Michigan and parts of Canada in June 2002 is a reminder of this threat. It is not known how the pest arrived in North America but, as with other exotic beetles, infested SWPM from Asia is suspected. The pest may have arrived some five years ago, before the interim rule on China was implemented. Ironically, many of the large ash trees favored by the pest were originally planted to replace elm trees killed by Dutch elm disease caused by yet another exotic pathogen. A preliminary assessment of the potential impact of the EAB on urban and timberland ash trees in the six quarantined counties in Michigan comes to about $11 billion in replacement costs alone. The nursery stock industry in the affected counties reported a loss in sales so far of $2 million. These estimates serve to highlight the potential magnitude of damage that could be caused by one outbreak alone of a pest on the targeted list.

The adoption of the IPPC treatment standards for all importing countries would address pest threats posed not only by Cerambycidae, which was the primary target of the China rule, but nine other pest families as well. Approximately 95 percent of pests intercepted by APHIS inspectors in shipments worldwide are pests on the IPPC target pest list.

The treatment requirements proposed in this rule are not expected to completely eliminate all pest interceptions related to SWPM. As evident from data reported between 2000 and 2001, two years following the implementation of the China rule, 7 percent of pest interceptions was still associated with China imports. To the extent that pest interceptions would be reduced, the risk of an outbreak would also be lower than in the absence of the rule. However, because pests continue to be intercepted albeit at a lower rate, benefits need to be correspondingly adjusted to reflect the risk.

In discussing the costs that might result from adopting this proposed rule, it is essential to recognize that to some degree these costs will accrue when other countries adopt the IPPC Guidelines, whether or not the United States also adopts them. As other countries impose IPPC treatment requirements on imports containing SWPM the global SWPM market will be greatly affected, likely causing a broader impact on the domestic wood packaging industry than the provisions of this proposed rule.

The impact of this rule would fall largely on foreign manufacturers of pallets. The increased treatment cost may add to the cost of packaging and transporting of goods which, in turn, would affect importers of commodities transported on pallets and final consumers of those goods are potentially impacted by this rule. The required treatments would add to the cost of packaging and transport of goods. Due to the very large number of pallets that are used to assist imported cargo, the overall cost may be substantial. The extent of the impact on U.S. consumers would depend on the ability of importers to pass on the additional costs to respective buyers. It is expected that most of the cost of treating pallets will be borne by foreign pallet manufacturers. Furthermore, given the small value of pallets as compared to the value of trade, increases in pallet prices are not expected to have a measurable effect on domestic consumers or on trade.

We also expect this proposed rule to affect U.S. purchasers of imported pallets, crates and boxes. Between 1999 and 2001, an average of 38 million pallets was imported into the United States, over 80 percent of which came from Canada. Imported SWPM was valued at $150 million during this time period. At approximately $3.95 per piece, imported pallets are less expensive than domestic pallets where the average price ranges between $8 and $12 per pallet. Canadian pallets are primarily used by industries close to the U.S. and Canadian border. The wood pallet market is highly competitive and the demand for imported pallets can be

characterized as elastic. While pallets made of alternative materials such as plastic, corrugated fiberboard, or processed wood are imperfect substitutes for wood, one wood pallet can easily substitute for another wood pallet.

Assuming a perfectly elastic supply and perfectly inelastic demand for imported pallets, and assuming a treatment cost that adds about $2 on average to a pallet, U.S. purchasers of imported pallets could lose an estimated $76 million in higher costs. The true extent of the impact however would be lower than this amount because demand is likely to be elastic and foreign importers are expected to share a greater burden of the cost increase. We do not know treatment costs for foreign pallet producers, but given the availability of substitutable domestic wood pallets, we do not expect U.S. purchasers of imported pallets to be significantly impacted.

The adoption of this rule would indirectly affect manufacturers who sell pallets, crates and boxes to foreign buyers. There are an estimated 3,000 manufacturers of pallets and containers in the United States. The primary importers of these items are Canada and Mexico. As these two countries prepare to implement the IPPC standard in 2003, only treated wood packing materials would likely be in demand for export. The extent of the impact on pallet and container manufacturers would depend on the ability of individual firms to put in place the necessary infrastructure for conducting treatments as required by the international standard. The number of firms that engage in export and would therefore be impacted is unknown. Regardless, the impact on the overall SWPM industry is expected to be small as the quantity of total pallets exported, estimated at about 10 million units, comprises only 2.5 percent of the 400 to 500 million pallets in production in the U.S. each year.

Domestic manufacturers of wood pallets may be indirectly affected in one other way. Because of the increasing trend in recycling of pallets for cost-cutting purposes, manufacturers may be faced with new demands for treated SWPM from domestic exporters who reuse pallets and wood containers to ship goods back from foreign countries. The number of firms affected in this way is unknown and may be large.

In sum, this rule would impact foreign manufacturers of pallets which may, in turn, affect importers and final consumers of goods transported on pallets. Because the cost of a pallet is a very small share of the bundle of goods transported on pallets, cost increases due to the treatment requirements are not expected to significantly affect domestic consumers and thus would not have a measurable impact on the flow of trade. This rule is not expected to reduce the amount of goods shipped internationally as is evident from observing trends in imports from China since implementation of the interim rule in 1999.

This rule would also affect U.S. consumers of imported pallets. Given the substitutability of wood pallets, the impact on consumers is expected to be small due to the availability of wood pallets. Foreign importers are likely to absorb a greater share of the cost increase.

The simultaneous adoption of the treatment standards by IPPC member countries that is directed at U.S. exports would likely create a broader impact on the domestic wood packaging industry than the provisions of this proposed rule. The adoption of the standard globally would ensure that U.S. producers and exporters are not placed at a competitive disadvantage by this rule as compared to their trading partners.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

An environmental impact statement (EIS) has been prepared for this proposed rule in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the EIS are available for public inspection in our reading room (information on the location and hours of the reading room is provided at the beginning of this proposed rule under the heading **ADDRESSES**). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

A notice of intent to prepare the EIS was published in the **Federal Register** on August 14, 2002 (67 FR 52893; Docket No. 02–032–1) and a notice availability of the draft EIS was published in the **Federal Register** on November 15, 2002 (67 FR 69216–69217, Docket No. ER–FRL–6634–9).

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 02–032–2. Please send a copy of your comments to: (1) Docket No. 02–032–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This rule would require persons treating SWPM in accordance with the regulations to apply an internationally recognized mark, and would require the plant protection services of countries where the SWPM is treated to develop procedures to monitor and audit the treatments. The information we propose to collect is the minimum needed to protect the United States from incursion by destructive insect pests and plant diseases. Failing to collect this information would cripple our ability to ensure that SWPM does not harbor destructive plant pests. APHIS inspectors at ports would examine SWPM for the IPPC-approved international mark required by the regulations. Therefore, the international mark is, in effect, a certificate verifying proper treatment. Persons who forge, alter, or fraudulently use the mark would be subject to administrative or criminal penalties.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed

information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.0041 hours per response.

*Respondents:* Importers/exporters of goods sent to the United States and foreign plant health protection authorities.

*Estimated annual number of respondents:* 3,000.

*Estimated annual number of responses per respondent:* 3,300.

*Estimated annual number of responses:* 9,900,000.

*Estimated total annual burden on respondents:* 40,590 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**Government Paperwork Elimination Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

**List of Subjects in 7 CFR Part 319**

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, 7751–7754, and 7760; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.40–3, paragraph (b) would be revised to read as follows:

**§ 319.40–3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.**

* * * * *

(b) *Solid wood packing material.* Solid wood packing material, whether in actual use as packing for regulated or nonregulated articles or imported as cargo, may be imported into the United States under a general permit in accordance with the following conditions:

(1) *Treatment.* The solid wood packing materials must have been:

(i) Heat treated to achieve a minimum wood core temperature of 56°C for a minimum of 30 minutes. Such treatment may employ kiln-drying, chemical pressure impregnation, or other treatments that achieve this specification through the use of steam, hot water, or dry heat; or,

(ii) Fumigated with methyl bromide in an enclosed area for at least 16 hours at the following dosage, stated in terms of grams of methyl bromide per cubic meter of the enclosure being fumigated. Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with label instructions approved by the U.S. Environmental Protection Agency:

| Temperature | Initial dose (g/m³) | Minimum required concentration (g/m³) after: | | | |
|---|---|---|---|---|---|
| | | 0.5 hrs. | 2 hrs. | 4 hrs. | 16 hrs. |
| 21 °C or above | 48 | 36 | 24 | 17 | 14 |
| 16 °C or above | 56 | 42 | 28 | 20 | 17 |
| 11 °C or above | 64 | 48 | 32 | 22 | 19 |

(2) *Marking.* The solid wood packing material must be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark that indicates that the article meets the requirements of this paragraph. The mark must be approved by the International Plant Protection Convention in its International Standards for Phytosanitary Measures to certify that wood packaging material has been subjected to an approved measure, and must include a unique graphic symbol, the ISO two-letter country code for the country that produced the solid wood packing material, a unique number assigned by the national plant protection agency of that country to the producer of the solid wood packing material, and an abbreviation disclosing the type of treatment (*e.g.*, HT for heat treatment or MB for methyl bromide fumigation).

(3) *Immediate reexport of SWPM without required mark.* An inspector at the port of first arrival may order the immediate reexport of SWPM that is imported without the mark required by paragraph (b)(2) of this section, in addition to or in lieu of any port of first arrival procedures required by § 319.40–9 of this part.

(4) *Exception for Department of Defense.* Solid wood packing material used by the Department of Defense (DOD) of the U.S. Government to package nonregulated articles, including commercial shipments pursuant to a DOD contract, may be imported into the United States without the mark required by paragraph (b)(2) of this section.

* * * * *

**§ 319.40–5 [Amended]**

3. In § 319.40–5, paragraphs (g) through (k) would be removed.

Done in Washington, DC, this 14th day of May 2003.

**Bill Hawks,**

*Under Secretary, Marketing and Regulatory Programs.*

[FR Doc. 03–12503 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–34–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2003–NE–05–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 Turboshaft Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines. This proposed AD would require replacement of the gas generator high pressure (HP) turbine disk before further flight after the engine has accumulated 5 minutes of operating time at the 2½ minute one engine inoperative (OEI) power rating. This proposed AD is prompted by a failure of an HP turbine blade during accelerated aging simulation tests performed by the manufacturer on an Arrius 2 B1A engine. The actions specified in this proposed AD are intended to prevent engine failure of the only operating engine while experiencing an OEI condition.

**DATES:** We must receive any comments on this proposed AD by July 21, 2003.

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

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–05–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You may get the service information identified in this proposed AD from Turbomeca S.A., 64511 Bordes Cedex, France; telephone 33 05 59 64 40 00, fax 33 05 59 64 60 80.

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

**FOR FURTHER INFORMATION CONTACT:** Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–05–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the AD Docket

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

### Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines. The DGAC advises that the manufacturer has performed accelerated aging simulation tests on an Arrius 2 B1A engine. The simulation tests were interrupted due to a failure of an HP turbine blade while the engine was running at the ''one engine inoperative'' power rating. The manufacturer has concluded that prolonged exposure of the HP turbine disk and blades at the 2½ minute OEI power rating may cause high exhaust gas temperature to initiate a creeping phenomenon of the blade material, leading to blade and disk failure. To date, no such failure event in the worldwide fleet has been reported.

### FAA's Determination and Requirements of the Proposed AD

These Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines, manufactured in France, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require replacement of the gas generator HP turbine disk before further flight after an engine's accumulated operating time at the 2½ minute OEI power rating exceeds 5 minutes.

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

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

### Costs of Compliance

There are approximately 396 Turbomeca S.A. Arrius 2 B1, 2 B1A, and 2 B1A 1, turboshaft engines, and 57 Arrius 2 K1 turboshaft engines of the affected design in the worldwide fleet. We estimate that 57 engines installed on helicopters of U.S. registry would be affected by this proposed AD. To date, no failure events in the worldwide fleet have been reported. Since the engine operating time usage at the 2½ minute OEI power rating is very limited, no cost to U.S. operators is foreseen.

### Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–05–AD'' in your request.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Turbomeca S.A.:** Docket No. 2003–NE–05–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by July 21, 2003.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD is applicable to Turbomeca S.A. Arrius 2 B1, 2 B1A, 2 B1A 1, and 2 K1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter Deutschland GmbH model EC135 T1 and Agusta S.p.A. model A109 helicopters.

**Unsafe Condition**

(d) This AD was prompted by a failure of an HP turbine blade during accelerated aging simulation tests performed by the manufacturer on an Arrius 2 B1A engine. The actions specified in this AD are intended to prevent engine failure of the only operating engine while at one engine inoperative (OEI) condition.

**Compliance**

(e) Compliance with this AD is required as indicated, unless already done.

(f) After the effective date of this AD, replace the gas generator HP turbine disk before further flight after the engine has accumulated 5 minutes operating time at the 2½ minute OEI power rating.

**Alternative Methods of Compliance**

(g) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, FAA.

**Material Incorporated by Reference**

(h) None.

**Related Information**

(i) The subject of this AD is addressed in DGAC airworthiness directive 2003–098(A), dated March 5, 2003, and Turbomeca S.A. Alert Service Letters No. 2174/02/ARRIUS2B1/19 and No. 2175/02/ARRIUS2K1/3, both dated July 30, 2002.

Issued in Burlington, Massachusetts, on May 14, 2003.

**Francis A. Favara,**

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

[FR Doc. 03–12541 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–157302–02]**

**RIN 1545–BB58**

## Deemed IRAs in Qualified Retirement Plans

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that provide guidance regarding accounts or annuities added to qualified employer plans where such accounts or annuities are to be treated as individual retirement plans. These regulations reflect changes made to the law by the Economic Growth and Tax Relief Reconciliation Act of 2001 and by the Job Creation and Worker Assistance Act of 2002. These regulations will affect administrators of, participants in, and beneficiaries of qualified employer plans.

**DATES:** Written and electronic comments and requests for a public hearing must be received by August 18, 2003.

**ADDRESSES:** Send submissions to: CC:PA:RU (REG–157302–02) 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–157302–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs.*

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Linda C. Phillips or Robert M. Walsh at (202) 622–6090; concerning submissions and delivery of comments, LaNita VanDyke (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 21, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.408(q)–1(f)(2). This collection of information is required by the IRS to ensure that the separate requirements of qualified employer plans and individual retirement plans are satisfied. The

collection of information is required to obtain a benefit. Specifically, this information is required for a taxpayer who wants to include individual retirement plans as part of its qualified employer plan.

*Estimated total annual reporting and/or recordkeeping burden:* 40,000 hours.

*Estimated average annual burden hours per respondent and/or recordkeeper:* 50 hours.

*Estimated number of respondents and/or recordkeepers:* 800.

The estimated frequency of responses is on occasion.

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

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

**Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 408(q) of the Internal Revenue Code (Code) relating to the addition of separate accounts and annuities to qualified employer plans. Section 408(q) was added to the Code by section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107–16 (115 Stat.117) and amended by section 411 of the Job Creation and Worker Assistance Act of 2002 (JCWAA), Public Law 107–147 (116 Stat. 21).

**Explanation of Provisions**

Section 408(q) provides that, if a qualified employer plan allows employees to make voluntary employee contributions to a separate account or annuity established under the plan and under the terms of the qualified employer plan such account or annuity meets the applicable requirements of section 408 or section 408A for an individual retirement account or annuity, then such account or annuity shall be treated for purposes of the Code in the same manner as an individual retirement plan rather than as a qualified employer plan. It further provides that contributions to such a ''deemed IRA'' shall be treated as contributions to the deemed IRA rather than to the qualified employer plan. Section 408(q) also expressly provides that the prohibition of commingling IRA assets with other property except in a common trust fund or common investment fund shall not apply to deemed IRAs. These proposed regulations define *qualified employer plan* and *voluntary employee contribution* as they are defined in section 408(q) of the Code.

Rules regarding deemed IRAs are also provided in section 4(c) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829) (ERISA), 29 U.S.C. 1003(c), as amended by Public Law 107–147 (116 Stat. 21). Section 4(c) provides that if a pension plan allows an employee to make voluntary employee contributions to a deemed IRA under section 408(q) of the Code, then the deemed IRA shall not be treated as part of such plan (or as a separate pension plan) for purposes of any provision of title I of ERISA other than section 403(c), 404, or 405 (relating to exclusive benefit, and fiduciary and co-fiduciary responsibilities). Section 4(c), as amended by JCWAA, further provides that the enforcement and administration rules of part 5 of subtitle B of title I of ERISA apply to deemed IRAs and that the applicable ERISA provisions shall apply to deemed IRAs in a manner similar to their application to a simplified employee pension (SEP) under Code section 408(k). Because title I of ERISA is within the jurisdiction of the Department of Labor, these regulations do not address the application of title I to deemed IRAs. Also, these regulations do not address the application of Code section 4975 to deemed IRAs. Section 102 of Reorganization Plan No. 4 of 1978 provides that the authority to interpret section 4975 has been transferred to the Department of Labor.

In general, these proposed regulations provide that a qualified employer plan and a deemed IRA are to be treated as separate entities under the Code and that each entity is subject to the rules generally applicable to that entity for purposes of the Code. Thus, a qualified employer plan (excluding the deemed IRA portion of the plan), whether it is a plan under section 401(a) (including defined benefit plans), 403(a), or 403(b), or a governmental plan under section 457(b), is subject to the rules applicable to that type of plan rather than to the rules applicable to IRAs under section 408 or 408A. Similarly, the deemed IRA portion of the qualified employer plan is generally subject to the rules applicable to traditional and Roth IRAs under sections 408 and 408A, respectively, and not to the rules applicable to plans under section 401(a), 403(a), 403(b), or 457.

Accordingly, these proposed regulations provide that issues regarding eligibility, participation, disclosure, nondiscrimination, contributions, distributions, investments, and plan administration are generally to be resolved under the separate rules (if any) applicable to each entity. In addition, these regulations specifically address several issues regarding the separate applicability of plan and IRA rules. For example, these proposed regulations provide that the availability of a deemed IRA is not a benefit, right or feature of the qualified employer plan under § 1.401(a)(4)–4. Thus, the availability of a deemed IRA is not subject to § 1.401(a)(4)–1(b)(3) which requires that benefits, rights, and features be available in a plan in a nondiscriminatory manner.

Similarly, these proposed regulations provide that the rules applicable to deemed IRAs with respect to the trusteeship of the IRA and deductibility of IRA contributions are the rules applicable to traditional IRAs and Roth IRAs under the Code. Thus, for example, taxpayers with compensation in excess of the limits imposed by sections 219 and 408A may either not be able to make contributions to deemed IRAs or the deductibility of such contributions may be limited. For deemed IRAs that are traditional IRAs, as with other traditional IRAs, the employee must make a determination as to whether a particular contribution is deductible and make the proper entries on his or her tax return. Pursuant to section 219(f)(3), a contribution made on account of the preceding taxable year will be treated as made on the last day of such taxable year if the contribution is actually made to the IRA not later than the time prescribed by law for filing the return for such taxable year (not including extensions). However, section 219(f)(5), regarding the taxable year in which amounts paid by an employer to an individual retirement plan are includible in the employee's income, is not applicable to deemed IRAs. Thus, amounts withheld from an employee's compensation and contributed to a deemed IRA, and which are treated as made on the last day of the preceding taxable year pursuant to section 219(f)(3), shall be includible in income in the year in which they are withheld rather than in the preceding taxable year.

The proposed regulations also provide that the minimum distribution rules of section 401(a)(9) of the Code must be met separately with respect to the qualified employer plan and the deemed IRA. The determination of whether a qualified employer plan satisfies the

required minimum distribution rules is made without regard to whether a participant satisfies the required minimum distribution rules with respect to the deemed IRA.

Although section 408(a) provides that an individual retirement account is a trust, these regulations do not require that a separate trust be created for each deemed IRA that is an individual retirement account. Rather, the regulations provide that all such deemed IRAs may be held in a single trust as long as that trust is separate from the trust that holds the other assets of the plan. Where a single trust is created for the deemed IRAs, the regulations also provide that there must be separate accounting for each deemed IRA and each deemed IRA must satisfy all of the requirements of section 408(a) (except the prohibition of commingling under paragraph (a)(5) of that section). These proposed regulations also provide a comparable rule for deemed IRAs that are individual retirement annuities.

These regulations provide three exceptions to the general rule that the qualified employer plan and the deemed IRA are separate entities subject to their separate rules for purposes of the Code. First, the regulations state that the qualified employer plan document must contain the deemed IRA provisions. In general, the plan document must provide for a deemed IRA and a deemed IRA must be in effect at the time the deemed IRA contributions are accepted. However, plan sponsors who want to provide deemed IRAs for plan years beginning in 2003 are not required to have such provisions in their plan document before the end of such plan years. *See* Revenue Procedure 2003–13 (2003–4 I.R.B. 317).

Second, pursuant to section 408(q)(1), the prohibition of section 408(a)(5) on the commingling of IRA assets with other property except in a common trust fund or a common investment fund is not applicable to the assets of a deemed IRA. Thus, the assets of the deemed IRA may be commingled for investment purposes with the assets of the other portion of the plan. Where the assets are commingled, the regulations require that separate accounts be maintained and that gains and losses must be allocated to these separate accounts. For example, if a deemed IRA is established under a defined contribution plan that is qualified under section 401(a) and the assets of the plan and the deemed IRA are commingled for investment purposes, then any gains or losses from the investment of the commingled assets of an employee must be allocated to the separate accounts of the employee under the deemed IRA and the plan.

Third, these proposed regulations provide that the failure of any of the deemed IRAs maintained by the plan to satisfy the applicable requirements of section 408 or 408A will cause the plan as a whole to fail to satisfy the plan's qualification requirements. Section 408(q) states that if a qualified employer plan elects to allow voluntary employee contributions to a separate account or annuity and that separate account or annuity meets the applicable requirements of section 408 or section 408A, then the account or annuity will be treated as an individual retirement plan rather than as a qualified employer plan. Section 408(q) applies only if the deemed IRAs maintained by the plan meet the requirements of section 408 or section 408A. If any of the deemed IRAs do not meet the applicable requirements, then section 408(q) does not apply, and the qualified employer plan will fail to satisfy its qualification requirements.

These proposed regulations provide a different rule where the portion of the plan that is not a deemed IRA fails to satisfy the qualification requirements of section 401(a). In that case, the deemed IRA is not a deemed IRA because section 408(q) does not apply where the plan is not a qualified employer plan. The regulations provide, however, that although the account or annuity that was intended to be a deemed IRA is not a deemed IRA, it may still be treated as a traditional or a Roth IRA if it satisfies the applicable requirements of section 408 or 408A (including the prohibition of commingling under paragraph (a)(5) of section 408).

If, as discussed above, a qualified employer plan or a deemed IRA fails to satisfy the applicable qualification requirements, it may nevertheless be treated as satisfying those requirements if the Employee Plans Compliance Resolution System (EPCRS), Rev. Proc. 2002–47 (2002–29 I.R.B. 133), or other administrative practice is used to correct the qualification failures. In this regard, the IRS intends that when Rev. Proc. 2002–47 is updated, it will include provisions permitting submissions for deemed IRAs.

These regulations also provide that a deemed IRA may be either a traditional IRA under section 408 or a Roth IRA under section 408A. However, because contributions to deemed IRAs are limited to employee contributions, while SIMPLE IRAs under section 408(p) and SEPs under section 408(k) may only receive employer contributions, the regulations provide that SIMPLE IRAs and SEPs may not be used as deemed IRAs.

As noted above, these regulations provide a general principle that a qualified employer plan and the deemed IRA feature are generally treated as separate entities under the Code and each is subject to the rules applicable to that entity. This principle can be applied to address a variety of issues which might arise with respect to deemed IRAs and, as a result, the regulations do not contain specific provisions addressing these issues. For example, as noted in Announcement 99–2 (1999–1 C.B. 305), employers may permit employees to contribute to traditional or Roth IRAs by direct deposits through payroll deduction. In addition, employees making direct deposits to traditional IRAs of deductible contributions may be able to adjust their Federal income tax withholding to receive a more immediate tax benefit from their contributions. Because the IRA rules apply to deemed IRAs as they would to traditional and Roth IRAs, the provisions of Announcement 99–2 apply to deemed IRAs.

Similarly, these regulations expressly provide that the rules applicable to rollovers and transfers to and from IRAs also apply to rollovers and transfers to and from deemed IRAs, but the regulations do not address all of the aspects of such rollovers or transfers. For example, because section 408(c)(3) permits the surviving spouse of an IRA owner to treat the IRA as his or her own, the same rules apply to deemed IRAs although not expressly stated in these regulations. Thus, in accordance with section 408(c)(3), a qualified employer plan may permit a surviving spouse to treat a decedent's deemed IRA as his or her own. However, the surviving spouse, as a non-employee, may not make voluntary employee contributions to that deemed IRA.

Also, because the qualified employer plan and the deemed IRA are generally treated as separate entities, the early distribution rules of section 72(t) are applied separately to the two entities. Thus, a determination as to whether a distribution is a part of a series of substantially equal periodic payments under section 72(t)(2)(iv) will be determined separately for the qualified employer plan and for the deemed IRA.

**Proposed Effective Date**

The regulations are proposed to apply beginning on or after August 1, 2003. Taxpayers may rely upon these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations,

the future guidance will be applied without retroactive effect.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. The collection of information in the regulations is in § 1.408(q)–1(f)(2) and consists of the requirement that deemed IRAs must be held in trusts or annuity contracts separate from the trust or annuity contract of the qualified employer plan. This certification is based on the fact that the cost of maintaining these separate trusts and annuity contracts is small, particularly for small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the 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.

**Drafting Information**

The principal authors of these regulations are Robert M. Walsh and Linda C. Phillips, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

**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 is amended by adding an entry in numerical order to read in part as follows:

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

§ 1.408(q)–1 also issued under 26 U.S.C. 408(q). * * *

**Par. 2.** Section 1.408(q)–1 is added to read as follows:

**§ 1.408(q)–1 Deemed IRAs in qualified employer plans.**

(a) *In general.* Under section 408(q) a qualified employer plan may permit employees to make voluntary employee contributions to a separate account or annuity established under the plan. If the requirements of section 408(q) and this section are met, such account or annuity is treated in the same manner as an individual retirement plan under section 408 or section 408A (and contributions to such an account or annuity are treated as contributions to an individual retirement plan and not to the qualified employer plan). The account or annuity is referred to as a deemed IRA.

(b) *Types of IRAs.* If the account or annuity meets the requirements applicable to traditional IRAs under section 408, the account or annuity is deemed to be a traditional IRA, and if the account or annuity meets the requirements applicable to Roth IRAs under section 408A, the account or annuity is deemed to be a Roth IRA. Simplified employee pensions (SEPs) under section 408(k) and SIMPLE IRAs under section 408(p) may not be used as deemed IRAs.

(c) *Separate entities.* Except as provided in paragraph (d) and (g) of this section, the qualified employer plan and the deemed IRA are treated as separate entities under the Internal Revenue Code and are subject to the separate rules applicable to qualified employer plans and IRAs, respectively. Issues regarding eligibility, participation, disclosure, nondiscrimination, contributions, distributions, investments, and plan administration are generally to be resolved under the separate rules (if any) applicable to each entity under the Internal Revenue Code.

(d) *Exceptions.* The following exceptions to treatment of a deemed IRA and the qualified employer plan as separate entities apply:

(1) The plan document of the qualified employer plan must contain the deemed IRA provisions and a deemed IRA must be in effect at the time the deemed IRA contributions are accepted. Notwithstanding the preceding sentence, employers that want to provide for deemed IRAs for plan years beginning before January 1, 2004 (but after December 31, 2002), are not required to have such provisions in their plan documents before the end of such plan years.

(2) The requirements of section 408(a)(5) regarding commingling of assets do not apply to deemed IRAs. Accordingly, the assets of a deemed IRA may be commingled for investment purposes with those of the qualified employer plan. However, the restrictions on the commingling of plan and IRA assets with non-plan assets apply to the assets of the qualified employer plan and the deemed IRA,

(e) *Application of distribution rules.* (1) Rules applicable to distributions from qualified employer plans under the Internal Revenue Code and regulations do not apply to distributions from deemed IRAs. Instead, the rules applicable to distributions from IRAs apply to distributions from deemed IRAs. Also, any restrictions that a trustee, custodian or insurance company is permitted to impose on distributions from traditional and Roth IRAs may be imposed on distributions from deemed IRAs (for example, early withdrawal penalties on annuities).

(2) The required minimum distribution rules of section 401(a)(9) must be met separately with respect to the qualified employer plan and the deemed IRA. The determination of whether a qualified employer plan satisfies the required minimum distribution rules of section 401(a)(9) is made without regard to whether a participant satisfies the required minimum distribution requirements with respect to the deemed IRA that is established under such plan.

(f) *Additional rules.*—(1) *Trustee.* The trustee or custodian of an individual retirement account must be a bank, as required by section 408(a)(2), or, if the trustee is not a bank, as defined in section 408(n), the trustee must be an entity that receives approval from the Internal Revenue Service to serve as a nonbank trustee or nonbank custodian pursuant to § 1.408–2(e) of the regulations.

(2) *Separate trusts and annuity contracts.* (i) Deemed IRAs that are individual retirement accounts may be held in a single trust (rather than in separate, individual trusts), provided the trust would qualify as a single plan within the meaning of § 1.414(l)–1(b). See also § 1.410(b)–7(a) and (b). However, any trust holding deemed IRA assets must be separate from the trust holding the other assets of the qualified employer plan. A deemed IRA trust must be created or organized in the United States for the exclusive benefit of the participants. In addition, the written governing instrument creating the trust must satisfy the requirements of paragraphs (1), (2), (3), (4), and (6) of section 408(a), and there must be separate accounting for the interest of each participant.

(ii) Deemed IRAs that are individual retirement annuities may be held under a single annuity contract or under separate annuity contracts. However,

any such contract must be separate from any annuity contract or contracts for the qualified employer plan. In addition, such contract must satisfy the requirements of section 408(b) and there must be separate accounting for the interest of each participant.

(3) *Deductibility.* The deductibility of voluntary employee contributions to a deemed traditional IRA is determined in the same manner as if it were made to any other traditional IRA. Thus, for example, taxpayers with compensation that exceeds the limits imposed by section 219(g) may not be able to make contributions to deemed IRAs, or the deductibility of such contributions may be limited in accordance with sections 408(a) and 219(g). However, section 219(f)(5), regarding the taxable year in which amounts paid by an employer to an individual retirement plan are includible in the employee's income, is not applicable to deemed IRAs.

(4) *Rollovers and transfers.* The same rules apply to rollovers and transfers to and from deemed IRAs as apply to rollovers and transfers to and from other IRAs. Thus, for example, an employee may request and receive a distribution of his or her deemed IRA account balance and may roll it over to an eligible retirement plan in accordance with section 408(d)(3), regardless of whether that employee may receive a distribution of any other plan benefits.

(5) *Nondiscrimination.* The availability of a deemed IRA is not a benefit, right or feature of the qualified employer plan under § 1.401(a)(4)–4 of the regulations.

(g) *Disqualifying defects.* If the qualified employer plan fails to satisfy its qualification requirements, either in form or in operation, section 408(q) does not apply. Accordingly, any account or annuity maintained under the plan as a deemed IRA is not a deemed IRA, and its status as an IRA will be determined by considering whether the account or annuity satisfies the applicable requirements of section 408 and 408A (including the prohibition of commingling under paragraph (a)(5) of section 408). Also, if any of the deemed IRAs fail to satisfy the applicable requirements of section 408 or 408A, section 408(q) does not apply and the plan will fail to satisfy the plan's qualification requirements.

(h) *Definitions.* The following definitions apply for purposes of this section:

(1) *Qualified employer plan.* A *qualified employer plan* is a plan described in section 401(a), an annuity plan described in section 403(a), a section 403(b) plan, or a governmental plan under section 457(b).

(2) *Voluntary employee contribution.* A *voluntary employee contribution* is any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C)) which is made by an individual as an employee under a qualified employer plan that allows employees to elect to make contributions to deemed IRAs and with respect to which the individual has designated the contribution as a contribution to which section 408(q) applies.

(i) *Effective date.* These regulations are applicable beginning on or after August 1, 2003.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

[FR Doc. 03–12675 Filed 5–19–03; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF DEFENSE

## Office of the Secretary

## 32 CFR Part 3

**RIN 0790–AG97**

## Transactions Other than Contracts, Grants, or Cooperative Agreements for Prototype Projects

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to implement section 822 of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107–107, 115 Stat. 1182. Section 822 provides for award of a follow-on production contract to traditional Defense contractors, without further competition, when the other transaction (OT) agreement for the prototype project provided for at least one-third non-Federal cost-share, consistent with law, and the OT agreement for the prototype project satisfies certain additional conditions of law.

**DATES:** Comments on the proposed rule must be received in writing to the address specified below by July 21, 2003, to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments on the proposed rule to: Office of the Director, Defense Procurement, Attn: Mr. David Boyd, OUSD(AT&L)/DPAP(P), 3060 Defense Pentagon, Washington, DC 20301–3060. Telefax (703) 614–1254.

**FOR FURTHER INFORMATION CONTACT:** David Boyd, (703) 697–6710.

**SUPPLEMENTARY INFORMATION:**

### Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, 107 Stat. 1721, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as ''other transaction'' agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to ''other transactions'' for prototype projects.

Use of OT authority is authorized by law in the absence of the significant participation of a nontraditional Defense contractor, when at least one-third of the costs of the prototype project are to be provided by non-Federal parties to the agreement. The authority granted by section 822 of the National Defense Authorization Act for Fiscal Year 2002 provides for the authority to continue such prototype projects into production without competition in certain circumstances. The circumstances are identified in this rule. Additionally, a rule will be issued to the Defense Federal Acquisition Regulation Supplement that exempts such production contracts from further competition, notwithstanding the requirements of section 2304 of title 10, United States Code.

In implementing the law, the Department clarifies that the number of production units and target prices proposed for production must be evaluated during the competition for the prototype project. This is consistent with the law's competition requirement and is the basis for being exempted from the need for further competition for the stated production quantity.

### Regulatory Evaluation

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

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

*Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)*

It has been certified that this rule does not contain a Federal mandate that may

result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

*Pub. L. 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)*

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional record keeping or other significant expense by project participants.

*Pub. L. 96–511, ''Paperwork Reduction Act of 1995'' (44 U.S.C. 3501 et seq.)*

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

*Federalism (Executive Order 13132)*

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

**List of Subjects in 32 CFR Part 3**

Government procurement, Transactions for prototype projects.

Accordingly, 32 CFR part 3 is proposed to be amended to read as follows:

## PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

1. The authority citation for 32 CFR part 3 continues to read as follows:

**Authority:** Section 845 of Public Law 103–160, 107 Stat. 1721, as amended.

2. Section 3.4 is amended to add new definitions in alphabetical order to read as follows:

*Project Manager.* The government manager for the prototype project.

*Contracting Officer.* A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings as defined in chapter 1 of title 48, CFR, Federal Acquisition Regulation, part 2.101(b).

3. New § 3.9 is added to read as follows:

### § 3.9 Follow-on production contracts.

(a) *Authority.* A competitively awarded OT agreement for a prototype project that satisfies the condition set forth in law that requires non-Federal parties to the OT agreement to provide at least one-third of the costs of the prototype project may provide for the award of a follow-on production contract to the awardee of the OT prototype agreement for a specific number of units at specific target prices, without further competition.

(b) *Conditions.* The Agreements Officer must do the following in the award of the prototype project:

(1) Ensure non-Federal parties to the OT prototype agreement offer at least-one third of the costs of the prototype project pursuant to subsection (d)(1)(B)(i), 10 U.S.C. 2371 note.

(2) Use competition to select parties for participation in the OT prototype agreement and evaluate the proposed quantity and target prices for the follow-on production units as part of that competition.

(3) Determine the production quantity that may be procured without further competition, by balancing of the level of the investment made in the project by the non-Federal parties with the interest of the Federal Government in having competition among sources in the acquisition of the product or products prototyped under the project.

(4) Specify the production quantity and target prices in the OT prototype agreement and stipulate in the agreement that the Contracting Officer for the follow-on contract may award a production contract without further competition if the awardee successfully completes the prototype project and agrees to production quantities and prices that do not exceed those specified in the OT prototype agreement (see part 206.001 of the Defense Federal Acquisition Regulation Supplement).

(c) *Limitation.* As a matter of policy, establishing target prices for production units should only be considered when the risk of the prototype project permits realistic production pricing without placing undue risks on the awardee.

(d) *Documentation.* (1) The Agreements Officer will need to provide information to the Contracting Officer from the agreement and award file that the conditions set forth in paragraph (b) of this section have been satisfied.

(2) The information shall contain, at a minimum:

(i) The competitive procedures used;

(ii) How the production quantities and target prices were evaluated in the competition;

(iii) The percentage of cost-share; and

(iv) The production quantities and target prices set forth in the OT agreement.

(3) The Project Manager will provide evidence of successful completion of the prototype project to the Contracting Officer.

Dated: May 12, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–12554 Filed 5–19–03; 8:45 am]

BILLING CODE 5001–08–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 100 and 117

**[CGD09–03–208]**

**RIN 1625–AA08**
**RIN 1625–AA09**

## Toledo Tall Ships Parade 2003, Port of Toledo, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish temporary regulations, including an exclusionary area and spectator anchorage areas, as well as drawbridge regulations for the Parade of Sail Toledo 2003 in the Port of Toledo, Ohio, on July 16, 2003. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected during this event. These regulations are intended to restrict vessel traffic from a portion of Lake Erie and the Maumee River.

**DATES:** Comments and related material must reach the Coast Guard on or before June 15, 2003.

**ADDRESSES:** You may mail or hand-deliver comments and related material to Marine Safety Office (MSO) Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604. MSO Toledo maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Herb Oertli, Chief of Port Operations, MSO Toledo, at (419) 418–6050.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for

this rulemaking (CGD09–03–208), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Comments and attachments should be submitted on 8 ½″ × 11″ unbound paper in a format suitable for copying. Persons requesting acknowledgement of receipt of comments should include a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to MSO Toledo at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The proposed temporary special local regulations are for the Toledo 2003 Tall Ships Parade of Sail that will be held in the Maumee River. The parade is currently scheduled to occur from 2 p.m. until 7 p.m. on July 16, 2003. These regulations will assist in providing for the safety of life on navigable waters and to protect commercial vessels, tall ships, spectators, and the Port of Toledo during this event.

American Sail Training Association is sponsoring Sail Toledo 2003. The scheduled events will occur July 16, 2003 in the Port of Toledo and surrounding waters. This event will consist of a Parade of Sail from the mouth of the Maumee River to Independence Park. The parade route will originate in Maumee Bay and continue inbound up the Maumee Bay and Maumee River channel to various berths throughout the Port of Toledo.

The Coast Guard expects several hundred spectator crafts to attend the parade of sail and tall ship celebration. The proposed regulations would create temporary anchorage regulations and vessel movement controls through the regulated area. The proposed regulations would be in effect from 9 a.m. until 7 p.m. on July 16, 2003. Vessel congestion, due to the anticipated large number of participating and spectator vessels, introduces extra or unusual hazards during this event poses a significant threat to the safety of life. This proposed rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

The Coast Guard proposes to establish a regulated area in the Maumee River that will be in effect during the Toledo Parade of Sail 2003 event. This proposed regulated area is needed to permit unrestricted law enforcement vessel access to support facilities. Additionally, the regulated areas will protect the maritime public and participating vessels from possible hazards to navigation associated with the dense vessel traffic.

The regulated area would cover all portions of the Maumee River upriver of a line drawn between north-east corner of Grassy Island at 41°42′24″N, 083°26′48″W and the south-west corner of Spoil area at 41°42′17″N, 083°26′38″W to the downriver side of the Anthony Wayne Bridge. All coordinates are based upon North American Datum 1983 (NAD 83). This temporary regulated area would be in effect from 9 a.m. until 7 p.m. on July 16, 2003.

On July 16, 2003, following the Parade of Sail, restrictions on vessels on the Maumee River will reopen in sequence with the movement and mooring of the final flotilla of tall ships. After the final flotilla of tall ships have passed the Martin Luther King, Jr. Bridge, vessel operators anchored in spectator anchorages north of the Martin Luther King Bridge may depart for locations outside of the Maumee River. After the final flotilla of tall ships has safely moored, vessel operators may transit the Maumee River. Vessels transiting the Maumee River must proceed as directed by on-scene Coast Guard personnel.

The Coast Guard proposes to establish spectator anchorage areas for spectator craft. All other vessels except those viewing the Parade of Sail Toledo 2003 are restricted from using these spectator anchorages. These spectator anchorage areas will be in effect on July 16, 2003.

To ensure the safety of the participating vessels during the parade, there will be two prolonged bridge openings on July 16, 2003. The CSX railroad bridge at mile 1.07, the Norfolk & Southern railroad bridge at mile 1.80, the Craig Memorial bridge at mile 3.30, and the Martin Luther King Memorial (a.k.a. Cherry Street) bridge at mile 4.30 will remain open to navigation from 12 p.m. until 1:30 p.m. and then from 2 p.m. until 3:30 p.m. Having two prolonged openings will accommodate participating vessels while at the same time allowing for both vehicular and pedestrian traffic the opportunity to cross the bridges during the parade.

**Regulatory Evaluation**

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

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

While this proposed regulation imposes traffic restrictions in portions of the Maumee River during the events, the effect of this regulation will not be significant for the following reasons: The regulated areas, spectator anchorages, will be limited in duration; and extensive advance notice will be made to the maritime community via Local Notice to Mariners, facsimile, marine safety information broadcasts, local Port Operators Group meetings, the Internet, and Toledo area newspapers and media. The advance notice will permit mariners to adjust their plans accordingly. Additionally, these regulated areas are tailored to impose the least impact on maritime interests without compromising safety.

**Small Entities**

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

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in portions of Maumee River during various times on July 16, 2003. These regulations would not have a significant economic impact on a substantial number of small entities because the Coast Guard will notify the public via mailings, facsimiles, Local

Notice to Mariners, marine safety information broadcasts, local Port Operators Group meetings, the media, the Internet, and Toledo area newspapers. In addition, the sponsoring organization, Huntington Toledo Tall Ships 2003, plans to announce event information in local newspapers, pamphlets, and television and radio broadcasts. This advance notice will permit mariners to adjust their plans accordingly. Although these regulations would apply to a substantial portion of the Port of Toledo, areas for viewing the Parade of Sail, are being established to maximize the use of the waterways by commercial vessels that usually operate in the affected areas.

If you think that your businesses, organization, or governmental jurisdiction qualifies as a small entity and believe that this rule would significantly impact them may submit a comment (see **ADDRESSES**) explaining why they think they qualify and how and to what degree this rule would economically affect them.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard aims to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Herb Oertli, MSO Toledo, at (419) 418–6040.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Environment**

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs 34 (f, g, and h) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

**List of Subjects**

*33 CFR Part 100*

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

*33 CFR Part 117*

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 and 117 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170.

2. Add temporary § 100.T09–208 to read as follows:

### § 100.TO9–208 Regulated area, Toledo Tall Ships Parade 2003, Port of Toledo, OH

(a) *Definitions.*

(1) *Regulated Area.* All waters of the Maumee River between a line drawn between north-east corner of Grassy Island at 41°24′24″ N, 083°26′48″ W and the south-west corner of Spoil area at 41°42′17″ N, 083°26′38″ W; to the downriver side of the Anthony Wayne Bridge at mile 4.30.

(2) *Spectator Vessel Anchorage Areas.*

(i) *Area A.* All waters of Maumee river south of Grassy Island, bounded by the following: Beginning at 41°41.56′ N, 083°28.35′ W; then south-east to 41°41.52′ N, 083°28.29′ W; then south-west to 41°41.18′ N, 083°28.73′ W; then north-west to 41°41.23′ N, 083°28.8′ W; then back to the beginning (NAD 83).

(ii) *Area B.* All waters of Maumee River bounded by the following: Beginning at 41°41.06′ N, 083°29.04′ W; then south-east to 41°41.01′ N, 083°28.96′ W; then south-west to 41°40.61′ N, 083°29.38′ W; then north-west to 41°40.661′ N, 083° 29.45′ W; then back to the beginning (NAD 83).

(iii) *Area C.* All waters of the Maumee River bounded by the following: Beginning at 41°40.48′ N, 083°29.66′ W;

then south-east to 41°40.43′ N, 083°29.56′ W; then south-west to 41°40.18′ N, 083°29.89′ W; then north-west to 41°40.24′ N, 083°29.98′ W; then back to the beginning (NAD 83).

(iv) *Area D.* All waters of the Maumee River bounded by the following: Beginning at 41°39.22′ N, 083°31.51′ W; then south-east to 41°39.16′ N, 083°31.45′ W; then south-west to 41°39.09′ N, 083°31.58′ W then north-west to 41°39.14′ N, 083°31.63′ W; then back to the of beginning (NAD 83).

**Note to paragraph (a)(2):** Mariners are cautioned that these areas being established as spectator areas have not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. In addition, substantial currents may exist in these spectator areas and not all portions of these areas are over good holding ground. Mariners are advised to take appropriate precautions when using these spectator areas.

(3) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Detroit.

(b) *Special Local Regulations.* (1) Except for vessels officially participating in the Toledo Tall Ships Parade 2003, or those vessels in designated spectator areas, no person or vessel may enter or remain in the regulated area without the permission of the Coast Guard Patrol Commander.

(2) Vessels in any spectator area shall proceed at no wake speeds not to exceed five miles per hour, unless otherwise authorized by the Captain of the Port.

(3) Vessel operators shall comply with the instructions of on-scene Coast Guard patrol personnel.

(4) After completion of the Parade of Sail on July 16, 2003, vessel operators within the Regulated Area are prohibited from passing outbound patrol vessels showing blue lights.

(5) Anchorage Area D, in paragraph (b)(iv) of his section, is restricted for use the of those vessels officially participating in Parade of Sail Toledo 2000 activities. No other vessels will be permitted in Spectator Area D without permission of the Captain of the Port.

(7) Vessels, except emergency, law enforcement, and those authorized by the Captain of the Port, may not transit through the regulated area.

(8) Vessels must vacate all spectator areas after the termination of the effective period for this regulation.

(9) Vessels must mark with an identifiable buoy any anchors which have been fouled on obstructions if such anchors cannot be freed or raised.

(10) Vessels which would like to view the tall ship events occurring in Maumee Bay prior to the tall ships entering the Maumee River must use Spectator Area A.

(11) Vessels are not to be left unattended in any spectator area at any time.

(12) Vessels are prohibited from securing tying off to any buoy or any other vessel within any spectator area.

(13) Vessels should maintain at least twenty (20) feet of clearance if maneuvering between anchored vessels.

(14) Vessels are prohibited from blocking access to any designated emergency medical evacuation areas.

(c) *Effective period.* This section is effective from 9 a.m. until 7 p.m. on July 16, 2003.

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

3. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039; Department of Homeland Security Delegation No. 0170.

4. From 12 p.m. until 3:30 p.m., Wednesday, July 16, 2003, suspend § 117.855, and add temporary § 117.T856 to read as follows:

### § 117.T856 Maumee River.

(a) The draws of the CSX Transportation railroad bridge, mile 1.07, Norfolk Southern railroad bridge, mile 1.80, Craig Memorial highway bridge, mile 3.30, and the Martin Luther King Memorial Bridge (a.k.a. Cherry Street Highway Bridge), mile 4.30, will remain open to navigation from 12 p.m. until 1:30 p.m. and from 2 p.m. until 3:30 p.m.

(b) The draw of the Norfolk Southern railroad bridge, mile 5.76, shall open on signal.

Dated: May 6, 2003.

**Ronald F. Silva,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 03–12492 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 110 and 165

**[CGD09–03–207]**

**RIN 1625–AA00**
**RIN 1625–AA01**

## Tall Ships 2003, Navy Pier, Lake Michigan, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary regulated navigation area (RNA), a moving safety zone and temporarily suspend two anchorage areas encompassed by the RNA for the 2003 Tall Ships Challenge. These regulations are necessary to control vessel traffic in the immediate vicinity for the protection of both participant and spectator vessels during the 2003 Tall Ships Challenge and Parade of Ships. These regulations are intended to restrict vessel traffic in a portion of Lake Michigan in the vicinity of Chicago Harbor for the duration of the event.

**DATES:** Comments and related material must reach the Coast Guard on or before June 10, 2003.

**ADDRESSES:** You may mail or hand-deliver comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street Suite D, Burr Ridge, IL 60527. Marine Safety Office (MSO) Chicago maintains the public docket for this rulemaking. Comments and material received from the public, as well as the documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Chicago between 8 a.m. and 4 p.m. Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** MST2 Kenneth Brockhouse, MSO Chicago, at (630) 986–2155.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–207), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Comments and attachments

should be submitted on 8½″ × 11″ unbound paper in a format suitable for copying. Persons requesting acknowledgement of receipt of comments should include a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Detroit at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

During the Chicago Tall Ships event, tall ships will be participating in a Tall Ships Parade and then mooring in Chicago harbor and in the Chicago River. A Regulated Navigation Area (RNA) would be established that encompasses portions of both of the Chicago Harbor as well as the Chicago River to protect those boarding the tall ships as well as spectator vessels from vessels transiting at excessive speeds creating large wakes, and also to prevent obstructed waterways. The RNA would be established on July 30, 2003 and terminate on August 3, 2003 after all the tall ships have departed the area.

A moving safety zone would be established around those vessels officially participating in the Tall Ships Parade of Ships. The Parade of Ships is the start of the Tall Ships 2003 in Chicago, Illinois and a large number of spectator vessels are expected. The parade will include approximately 20 to 30 tall ships and will take place starting on the morning of July 30, 2003 until the evening of July 30, 2003.

**Discussion of Proposed Rule**

The Coast Guard is proposing to establish an RNA starting at the Southeast Guide Wall light at 41°53′17.76″ N, 87°36′09.110″ W; then south south-easterly to 41°52′48″ N, 087°36′08″ W; then east to the southern most end of the outer Chicago Harbor break wall at 41°52′48″ N, 087°35′26″ W; then north following the outer Chicago Harbor break wall to 41°54′11″ N, 087°36′29″ W; then southwest to the north-eastern tip of the Central District Filtration Plant; then to the southeastern tip of the Central Filtration Plant; then to the north-east corner of the Navy Pier; then following the shoreline and/or seawall, including up the Chicago River to the eastern side of the Michigan Avenue bridge, back to the point of origin (NAD 83).

Within the RNA, no vessel shall exceed 5 mph nor produce a wake. No vessel in the RNA shall pass within 20 feet of a moored tall ship. Any vessel within the RNA must adhere to the direction of the Captain of the Port or his on scene representative which will be the Patrol Commander.

On July 30, 2003, from 10 a.m. until approximately 8 p.m. the Parade of Sail is scheduled to take place. A moving safety zone would be established around all tall ships participating in the parade. The safety zone would extend 100 yards in all directions of each vessel officially participating in the parade. The safety zone will be in effect as tall ships pass the mustering point at 42°03′24″ N, 087°38′20.4″ W heading south towards Chicago Harbor (NAD 83).

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 on Regulatory Planning and Review and therefore 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 this rule under that order. It is non-significant under Department of Homeland Security regulatory policies and procedures. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of an activated safety zone. The safety zone and suspended anchorage area would not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can safely pass outside the proposed safety zone during the event. Traffic would be allowed to pass through the safety zone only with the permission of the Captain of the Port or his on scene representative which will be the Patrol Commander. In addition, before the effective period, the Coast Guard would issue maritime advisories widely available to users who might be in the affected area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MSO Chicago (see **ADDRESSES.**)

**Collection of Information**

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

**Federalism**

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Environment**

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects**

*33 CFR Part 110*

Anchorage grounds.

*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 parts 110 and 165 as follows:

## PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1(g), and Department of Homeland Security No. 0170.

### § 110.205 Suspended

2. From 10:30 a.m. (local time) on July 30, 2003, until 8 p.m. (local time) on August 3, 2003, § 110.205(a)(1) and (a)(2) are temporarily suspended.

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

4. From 10 a.m. on Wednesday, July 30, 2003 through 5 p.m. on Sunday, August 3, 2003, add § 165.T09–207 to read as follows:

### § 165.T09–207 Tall Ships 2003, Navy Pier, Lake Michigan, Chicago, IL.

(a) *Regulated navigation area.*

(1) *Location.* The following is a regulated navigation area (RNA): starting at the Southeast Guide Wall light at 41°53′17.76″ N, 87°36′09.110″ W; then south south-easterly to 41°52′48″ N, 087°36′08″ W; then east to the southern most end of the outer Chicago Harbor break wall at 41°52′48″ N, 087°35′26″ W; then north following the outer Chicago Harbor break wall to 41°54′11″ N, 087°36′29″ W; then southwest to the north-eastern tip of the Central District Filtration Plant; then to the southeastern tip of the Central Filtration Plant; then to the north-east corner of the Navy Pier; then following the shoreline and/or seawall, including up the Chicago River to the eastern side of the Michigan Avenue bridge, back to the point of origin (NAD 83).

(2) *Enforcement period.* The section will be enforced from 8 p.m. on Wednesday, July 30, 2003 until 5 p.m. on Sunday, August 3, 2003.

(3) *Special regulations.* Vessels within the RNA shall not exceed 5 miles per hour or shall proceed at no-wake speed, whichever is slower. Vessels within the RNA shall not pass within 20 feet of a moored tall ship. Vessels within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft.

(b) *Safety zone.*—(1) *Location.* The following is a moving safety zone: All navigable waters 100 yards ahead of the first official parade vessel, 50 yards abeam of each parade vessel, and 50 yards astern of the last vessel in the parade between the muster point at 42°03′24″ N, 087°38′20.4″ W until each official parade vessel is moored (NAD 83).

(2) *Enforcement period.* This section will be enforced from 10 a.m. until 8 p.m., or until the last tall ship is moored, on Wednesday, July 30, 2003.

(c) *Regulations.*—(1) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed. U.S. Coast Guard Auxiliary, representatives of the event organizer, and local or state officials may be present to inform vessel operators of this regulation and other applicable laws.

(2) In cases where shipping is affected by this section, commercial vessels may request permission from the Captain of the Port, Chicago to transit the safety zone. Approval in such cases will be case-by-case. Requests must be made in advance and approved by the Captain of the Port or his designated on-scene representative. The Captain of the Port, Chicago or his designated on-scene representative may be contacted on Channel 16, VHF–FM.

Dated: May 6, 2003.

**Ronald F. Silva,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 03–12494 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–15–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[CGD07–02–160]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Canaveral Barge Canal, Cape Canaveral, Brevard County, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the operating regulations of the Christa McAuliffe bridge, SR 3, across the Canaveral Barge Canal at Cape Canaveral, Florida. Under the proposed rule, the bridge need open only twice an hour from 6 a.m. to 10 p.m. for vessel traffic, except during the morning and evening rush hours when the bridge may remain closed to facilitate vehicular traffic. The proposed rule would also require the bridge to open with 3 hours notice from 10:01 p.m. to 5:59 a.m. This change would improve the flow of vehicular traffic without significantly impacting the needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before July 21, 2003.

**ADDRESSES:** You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Ave., Room 432, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of [CGD07–02–160] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, 909 S.E. 1st Ave Miami, FL 33131, telephone number 305–415–6743.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–02–160], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

A public meeting has not been scheduled for this proposed rule. However, you may submit a request for a meeting in writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Christa McAuliffe bridge, SR 3, across the Canaveral Barge Canal is a twin, double bascule leaf bridge with a vertical clearance of 21.6 feet at mean high water and a horizontal clearance of 90.3 feet. The current operating regulations published in 33 CFR 117.273(a), provide for the bridge to open on signal from 6 a.m. to 10 p.m. except that, from 6:15 a.m. to 7:45 a.m. and from 3:30 p.m. to 5:15 p.m., Monday through Friday, except Federal holidays, the bridge need not open for the passage of vessels. From 10:01 p.m. to 5:59 a.m., everyday, the bridge shall open on signal if at least three hours notice is given to the bridge tender. The bridge shall open as soon as possible for the passage of public vessels of the United States, tugs with tows and vessels in distress. The local residents requested a change to the current operating schedule to ease the flow of vehicular traffic on and off of Cape Canaveral through their neighborhood. On May 22, 2002, a temporary final rule was published in the **Federal Register** (Volume 67, Number 99, pages 35903–35904) to facilitate repairs to the bridge. In pertinent part, for four months, from 8:15 a.m. to 3 p.m., Monday through Friday except Federal holidays, the draw opened on the hour and half hour for the passage of vessels. This temporary change to bridge openings for limited times during the day met the reasonable needs of navigation and the needs of vehicular traffic in the neighborhood while facilitating repair to the bridge. Additionally, the difference between the number of bridge openings under this proposed rule and the historical number of bridge openings under the existing, permanent rule is minimal. Accordingly, based on the results of the temporary rule and the minimal difference in bridge openings, the proposed rule will meet the reasonable needs of navigation on this waterway.

### Discussion of Proposed Rule

Under the proposed rule, the bridge need only open on the hour and half-hour from 6 a.m. to 10 p.m., except from 6:15 a.m. to 8:15 a.m. and from 3:10 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the bridge need not open. From 10:01 p.m. to 5:59 a.m., everyday, the bridge shall open on signal if at least 3 hours advance notice is given to the bridge tender. The bridge shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in distress.

### Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the proposed rule only slightly modifies the current closure periods and still provides for regular openings.

### Small Entities

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

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. The proposed rule only slightly modifies the current closure periods, because it still provides for two openings per hour during the daytime and allows for passage of tugs with tows on signal between 6 a.m. and 10 p.m.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.** Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and 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 regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

**Indian Tribal Governments**

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

**Energy Effects**

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

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.273(a) is revised to read as follows:

### § 117.273 Canaveral Barge Canal.

(a) The draws of the Christa McAuliffe bridge, SR 3, mile 1.0, across the Canaveral Barge Canal need only open daily for vessel traffic on the hour and half-hour from 6 a.m. to 10 p.m.; except that from 6:15 a.m. to 8:15 a.m. and from 3:10 p.m. to 5:59 p.m., Monday through Friday, except Federal holidays, the bridge need not open. From 10:01 p.m. to 5:59 a.m., everyday, the bridge shall open on signal if at least 3 hours notice is given to the bridge tender. The bridge shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in distress.

* * * * *

Dated: May 5, 2003.

**James S. Carmichael,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 03–12496 Filed 5–19–03; 8:45 am]

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**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 262**

**[Docket Nos. 2002–1 CARP DTRA3 and 2001–2 CARP DTNSRA]**

## Digital Performance Right in Sound Recordings and Ephemeral Recordings

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Copyright Office of the Library of Congress is requesting comment on proposed regulations that set rates and terms for the use of sound recordings in eligible nonsubscription transmissions and new subscription services, other than transmissions made by certain noncommercial entities, together with related ephemeral recordings. The rates and terms are for the 2003 and 2004 statutory licensing period, except in the case of new subscription services in which case the license period runs from 1998 through 2004. The agreement published herein supersedes the agreement published in the **Federal Register** on May 1, 2003, and parties should only comment on the proposed rates and terms set forth in this notice.

**DATES:** Comments are due no later than June 19, 2003.

**ADDRESSES:** An original and five copies of any comment shall be delivered by hand to: Office of the General Counsel, James Madison Memorial Building, Room LM–403. First and Independence Avenue, SE., Washington, DC 20559–6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

**SUPPLEMENTARY INFORMATION:** On May 1, 2003, the Copyright Office published a notice in the **Federal Register** requesting comment on proposed regulations that set rates and terms for the use of sound recordings in certain eligible nonsubscription transmissions made pursuant to sections 114 of the Copyright Act, title 17 of the United States Code, during the 2003 and 2004 statutory licensing period, as well as for the making of ephemeral recordings necessary for the facilitation of such transmissions in accordance with a second statutory license set forth in section 112(e). The proposal also included rates and terms for the use of sound recordings in transmissions made by new subscription services from 1998 through December 31, 2004, and the making of the related ephemeral recordings under these same statutory licenses. 68 FR 23241 (May 1, 2003). These proposed rates and terms were part of a settlement agreement negotiated by Sound Exchange, a division of the Recording Industry Association of America, Inc., the American Federation of Television and Radio Artists, the American Federation of Musicians of the United States and Canada, and the Digital Media Association, and were submitted to the Copyright Office on April 14, 2003, along with a petition, requesting that the Office publish the proposed rates and terms pursuant to § 251.63(b) of title 37 of the Code of Federal Regulations, which it did. *Id.*

However, the April 14 proposal has been superseded by a second proposal which was submitted to the Copyright Office on May 8, 2003. The new agreement amends the proposal in the April 14 submission with the approval of the parties to the first agreement, who did not participate in the new round of negotiations, and includes for the first time rates and terms for simulcasts of AM and FM radio broadcast programming.[1] These new rates are the result of an agreement between Copyright Owners and Performers and Broadcasters.[2] The May 8 agreement also includes proposed rates and terms for the use of sound recordings in the reproduction of ephemeral recordings by business establishment services. These rates and terms were agreed to by the Copyright Owners and Performers and Music Choice, the only business establishment service participating in this proceeding, and cover the 2003 and 2004 statutory license period. As before, the Petitioners request that the Office publish the amended proposed rates and terms for public comment pursuant to 37 CFR 251.63(b).

Section 251.63(b) of title 37 of the Code of Federal Regulations allows the Librarian to adopt the parties' proposed rates and terms without convening a Copyright Arbitration Royalty Panel (''CARP'') for this purpose, provided that the proposed rates and terms are published in the **Federal Register** and no interested party with an intent to participate in the proceeding files a comment objecting to the proposed terms. In other words, unless there is an objection from a person with a significant interest in the proceeding who is prepared and eligible to participate in a CARP proceeding, the purpose of which is to adjust the rates and terms for use of sound recordings in eligible nonsubscription transmissions and new subscription services pursuant to the section 112 and section 114 statutory licenses, the Librarian can adopt the rates and terms in the proposed settlement in final regulations without convening a CARP. This procedure to adopt negotiated rates and terms in the case where an agreement has been reached has been specifically endorsed by Congress.

> If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless expense of an arbitration proceeding conducted under [section 114(f)(2)(1995)]. Thus, it is the Committee's intention that in such a case, as under the Copyright Office's current regulations concerning rate adjustment proceedings, the Librarian of Congress should notify the public of the proposed agreement in a notice-and-comment proceeding and, if no opposing comment is received from a party with a substantial interest and an intent to participate in an arbitration proceeding, the Librarian of Congress should adopt the rates embodied in the agreement without convening an arbitration panel.

S. Rep. No. 104–128, at 29 (1995)(citations omitted).

Accordingly, the Copyright Office is granting the joint petition filed on May 8 and is publishing for public comment the proposed rates and terms embodied in the amended agreement as submitted to the Office on May 8. Because this notice includes amendments to the proposal published in the May 1 notice, interested parties should comment only on the rates and terms published herein and should not comment on those published in the May 1 notice. Any party who objects to the amended proposed rates and terms set forth herein must file a written objection with the Copyright Office and an accompanying Notice of Intent to

[1] Petitioners note that a dispute over the scope of certain exemptions to Section 106(6) pertaining to the broadcasters is pending in the U.S. Court of Appeals for the Third Circuit, *Bonneville Int'l Corp.* v. *Peters,* No. 01–CV–408 (E.D. Pa. Aug. 1, 2001), appeal docketed, No. 01–3720 (3rd Cir. Oct. 1, 2001) and that ''[n]othing in this Joint Petition is intended to resolve that dispute, prejudice the position of any of the parties thereto, or imply that any activities determined to be exempt are 'covered' by the rates and terms set forth herein.'' Petition at 3 n.3 (May 8, 2003).

[2] Those entities who negotiated on behalf of the broadcasters include, Bonneville International Corporation, Clear Channel Communications, Inc., the National Religious Broadcasters Music License Committee, Salem Communications Corporation and Susquehanna Radio Corporation.

Participate, if the party has not already done so, in accordance with the requirements set forth in the Copyright Office's November 20, 2001, Notice. *See* 66 FR 58180, 58181 (November 20, 2001). The content of the written challenge should describe the party's interest in the proceeding, the proposed rule the party finds objectionable, and the reasons for the challenge. If no comments are received, the regulations shall become final upon publication of a final rule and shall cover the period from January 1, 2003, to December 31, 2004, except that the period covered for new subscription services runs from October 28, 1998, to December 31, 2004.

**List of Subjects in 37 CFR Part 262**

Copyright, Digital audio transmissions, Performance right, Sound recordings.

**Proposed Regulation**

In consideration of the foregoing, the Copyright Office proposes adding part 262 to 37 CFR to read as follows:

## PART 262—RATES AND TERMS FOR CERTAIN ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS, NEW SUBSCRIPTION SERVICES AND THE MAKING OF EPHEMERAL REPRODUCTIONS

Sec.

262.1 General.
262.2 Definitions.
262.3 Royalty fees for public performance of sound recordings and for ephemeral recordings.
262.4 Terms for making payment of royalty fees and statements of account.
262.5 Confidential information.
262.6 Verification of statements of account.
262.7 Verification of royalty payments.
262.8 Unclaimed funds.

**Authority:** 17 U.S.C. 112(e), 114, 801(b)(1).

### § 262.1 General.

(a) *Scope.* This part 262 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of Ephemeral Recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period 2003–2004 and in the case of Subscription Services 1998–2004 (the ''License Period'').

(b) *Legal compliance.* Licensees relying upon the statutory licenses set forth in 17 U.S.C. 112 and 114 shall comply with the requirements of those sections, the rates and terms of this part and any other applicable regulations.

(c) *Relationship to voluntary agreements.* Notwithstanding the royalty rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services shall apply in lieu of the rates and terms of this part to transmissions within the scope of such agreements.

### § 262.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Aggregate Tuning Hours* means the total hours of programming that the Licensee has transmitted during the relevant period to all Listeners within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions or noninteractive digital audio transmissions as part of a new subscription service, less the actual running time of any sound recordings for which the Licensee has obtained direct licenses apart from 17 U.S.C. 114(d)(2) or which do not require a license under United States copyright law. By way of example, if a service transmitted one hour of programming to 10 simultaneous Listeners, the service's Aggregate Tuning Hours would equal 10. If 30 minutes of that hour consisted of transmission of a directly licensed recording, the service's Aggregate Tuning Hours would equal 9 hours and 30 minutes. As an additional example, if one Listener listened to a service for 10 hours (and none of the recordings transmitted during that time was directly licensed), the service's Aggregate Tuning Hours would equal 10.

(b) *Broadcast Simulcast* means

(1) A simultaneous Internet transmission or retransmission of an over-the-air terrestrial AM or FM radio broadcast, including one with previously broadcast programming substituted for programming for which requisite licenses or clearances to transmit over the Internet have not been obtained and one with substitute advertisements, and

(2) An Internet transmission in accordance with 17 U.S.C. 114(d)(2)(C)(iii) of an archived program, which program was previously broadcast over-the-air by a terrestrial AM or FM broadcast radio station, in either case whether such Internet transmission or retransmission is made by the owner and operator of the AM or FM radio station that makes the broadcast or by a third party.

(c) *Business Establishment Service* means a service making transmissions of sound recordings under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv).

(d) *Copyright Owner* is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) or 114.

(e) *Designated Agent* is the agent designated by the Librarian of Congress as provided in § 262.4(b).

(f) *Ephemeral Recording* is a phonorecord created for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) or for the purpose of facilitating a transmission of a public performance of a sound recording under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

(g) *Licensee* is a person or entity that

(1) Has obtained a compulsory license under 17 U.S.C. 114 and the implementing regulations therefor to make eligible nonsubscription transmissions, or noninteractive digital audio transmissions as part of a new subscription service (as defined in 17 U.S.C. 114(j)(8)), or that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings for use in facilitating such transmissions, or

(2) Is a Business Establishment Service that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make Ephemeral Recordings, but not a person or entity that:

(i) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(ii) Has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted; or

(iii) Is a State or possession or any governmental entity or subordinate thereof, or the United States or District of Columbia, making transmissions for exclusively public purposes.

(h) *Listener* is a player, receiving device or other point receiving and rendering a transmission of a public performance of a sound recording made by a Licensee, irrespective of the number of individuals present to hear the transmission.

(i) *Nonsubscription Service* means a service making eligible nonsubscription transmissions.

(j) *Performance* is each instance in which any portion of a sound recording is publicly performed to a Listener by means of a digital audio transmission or

retransmission (*e.g.*, the delivery of any portion of a single track from a compact disc to one Listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (*e.g.*, the sound recording is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained a license from the Copyright Owner of such sound recording; and

(3) An incidental performance that both:

(i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(k) *Performers* means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the parties identified in 17 U.S.C. 114(g)(2)(D).

(l) *Subscription Service* means a new subscription service (as defined in 17 U.S.C. 114(j)(8)) making noninteractive digital audio transmissions.

(m) *Subscription Service Revenues* shall mean all monies and other consideration paid or payable, including the fair market value of non-cash or in-kind consideration paid or payable by third parties, from the operation of a Subscription Service, as comprised of the following:

(1) Subscription fees and other monies and consideration paid for access to the Subscription Service by or on behalf of subscribers receiving within the United States transmissions made as part of the Subscription Service;

(2) Monies and other consideration (including without limitation customer acquisition fees) from audio or visual advertising, promotions, sponsorships, time or space exclusively or predominantly targeted to subscribers of the Subscription Service, whether

(i) On or through the Subscription Service media player, or on pages accessible only by subscribers or that are predominantly targeted to subscribers, or

(ii) In e-mails addressed exclusively or predominantly to subscribers of the Subscription Service, or

(iii) Delivered exclusively or predominantly to subscribers of the Subscription Service in some other manner, in each case less advertising agency commissions (not to exceed 15% of those monies and other consideration) actually paid to a recognized advertising agency not owned or controlled by Licensee;

(3) Monies and other consideration (including without limitation the proceeds of any revenue-sharing or commission arrangements with any fulfillment company or other third party, and any charge for shipping or handling) from the sale of any product or service directly through the Subscription Service media player or through pages or advertisements accessible only by subscribers or that are predominantly targeted to subscribers (but not pages or advertisements that are not predominantly targeted to subscribers), less

(i) Monies and other consideration from the sale of phonorecords and digital phonorecord deliveries of sound recordings,

(ii) The Licensee's actual, out-of-pocket cost to purchase for resale the products or services (except phonorecords and digital phonorecord deliveries of sound recordings) from third parties, or in the case of products produced or services provided by the Licensee, the Licensee's actual cost to produce the product or provide the service (but not more than the fair market wholesale value of the product or service), and

(iii) Sales and use taxes, shipping, and credit card and fulfillment service fees actually paid to unrelated third parties; provided that:

(A) The fact that a transaction is consummated on a different page than the page/location where a potential customer responds to a ''buy button'' or other purchase opportunity for a product or service advertised directly through such player, pages or advertisements shall not render such purchase outside the scope of Subscription Service Revenues hereunder, and

(B) Monies and other consideration paid by or on behalf of subscribers for software or any other access device owned by Licensee (or any subsidiary or other affiliate of the Licensee, but excluding, for the avoidance of doubt, any entity that sells a third-party product, whether or not bearing the Licensee's brand) to access the Licensee's Subscription Service shall not be deemed part of Subscription Service Revenues, unless such software or access device is required as a condition to access the Subscription Service and either is purchased by a subscriber contemporaneously with or after subscribing or has no independent function other than to access the Subscription Service;

(4) Monies and other consideration for the use or exploitation of data specifically and separately concerning subscribers or the Subscription Service, but not monies and other consideration for the use or exploitation of data wherein information concerning subscribers or the Subscription Service is commingled with and not separated or distinguished from data that predominantly concern nonsubscribers or other services; and

(5) Bad debts recovered with respect to paragraphs (m)(1) through (4) of this section; provided that the Subscription Service shall be permitted to deduct bad debts actually written off during a reporting period.

**§ 262.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.**

(a) *Basic royalty rate.* Royalty rates and fees for eligible nonsubscription transmissions made by Licensees pursuant to 17 U.S.C. 114(d)(2) during the period January 1, 2003, through December 31, 2004, and the making of Ephemeral Recordings pursuant to 17 U.S.C. 112(e) to facilitate such transmissions; noninteractive digital audio transmissions made by Licensees pursuant to 17 U.S.C. 114(d)(2) as part of a new subscription service during the period October 28, 1998, through December 31, 2004, and the making of Ephemeral Recordings pursuant to 17 U.S.C. 112(e) to facilitate such transmissions; and the making of Ephemeral Recordings by Business Establishment Services pursuant to 17 U.S.C. 112(e) during the period January 1, 2003, through December 31, 2004, shall be as follows:

(1) *Nonsubscription Services.* For their operation of Nonsubscription Services, Licensees other than Business Establishment Services shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) *Per Performance Option.* $0.000762 (0.0762¢) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel

switching; Provided that this provision is not intended to imply that permitting users of a service to ''skip'' a recording is or is not permitted under 17 U.S.C. 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial Performances.

(ii) *Aggregate Tuning Hour Option.*—(A) *Non-Music Programming.* $0.000762 (0.0762¢) per Aggregate Tuning Hour for programming reasonably classified as news, talk, sports or business programming.

(B) *Broadcast Simulcasts.* $0.0088 (0.88¢) per Aggregate Tuning Hour for Broadcast Simulcast programming not reasonably classified as news, talk, sports or business programming.

(C) *Other Programming.* $0.0117 (1.17¢) per Aggregate Tuning Hour for programming other than Broadcast Simulcast programming and programming reasonably classified as news, talk, sports or business programming.

(2) *Subscription Services.* For their operation of Subscription Services, Licensees other than Business Establishment Services shall, at their election as provided in paragraph (b) of this section, pay at one of the following rates:

(i) *Per Performance Option.* $0.000762 (0.0762¢) per Performance for all digital audio transmissions, except that 4% of Performances shall bear no royalty to approximate the number of partial Performances of nominal duration made by a Licensee due to, for example, technical interruptions, the closing down of a media player or channel switching; Provided that this provision is not intended to imply that permitting users of a service to ''skip'' a recording is or is not permitted under 17 U.S.C. 114(d)(2). For the avoidance of doubt, this 4% exclusion shall apply to all Licensees electing this payment option irrespective of the Licensee's actual experience in respect of partial performances.

(ii) *Aggregate Tuning Hour Option.*—(A) *Non-Music Programming.* $0.000762 (0.0762¢) per Aggregate Tuning Hour for programming reasonably classified as news, talk, sports or business programming.

(B) *Broadcast Simulcasts.* $0.0088 (0.88¢) per Aggregate Tuning Hour for Broadcast Simulcast programming not reasonably classified as news, talk, sports or business programming.

(C) *Other Programming.* $0.0117 (1.17¢) per Aggregate Tuning Hour for programming other than Broadcast Simulcast programming and programming reasonably classified as news, talk, sports or business programming.

(iii) *Percentage of Subscription Service Revenues Option.* 10.9% of Subscription Service Revenues, but in no event less than 27¢ per month for each person who subscribes to the Subscription Service for all or any part of the month or to whom the Subscription Service otherwise is delivered by Licensee without a fee (*e.g.*, during a free trial period), subject to the following reduction associated with the transmission of directly licensed sound recordings (if applicable). For any given payment period, the fee due from Licensee shall be the amount calculated under the formula described in the immediately preceding sentence *multiplied by* the following fraction: the total number of Performances (as defined under § 262.2(j), which excludes directly licensed sound recordings) made by the Subscription Service during the period in question, *divided by* the total number of digital audio transmissions of sound recordings made by the Subscription Service during the period in question (inclusive of Performances and equivalent transmissions of directly licensed sound recordings). Any Licensee paying on such basis shall report to the Designated Agent on its statements of account the pertinent music use information upon which such reduction has been calculated. This option shall not be available to a Subscription Service where—

(A) A particular computer software product or other access device must be purchased for a separate fee from the Licensee as a condition of receiving transmissions of sound recordings through the Subscription Service, and the Licensee chooses not to include sales of such software product or other device to subscribers as part of Subscription Service Revenues in accordance with § 262.2(m)(3), or

(B) The consideration paid or given to receive the Subscription Service also entitles the subscriber to receive or have access to material, products or services other than the Subscription Service (for example, as in the case of a ''bundled service'' consisting of access to the Subscription Service and also access to the Internet in general). In all events, in order to be eligible for this payment option, a Licensee may not engage in pricing practices whereby the Subscription Service is offered to subscribers on a ''loss leader'' basis or whereby the price of the Subscription Service is materially subsidized by payments made by the subscribers for other products or services.

(3) *Business Establishment Services.* For the making of any number of Ephemeral Recordings in the operation of a service pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), a Licensee that is a Business Establishment Service shall pay 10% of such Licensee's ''Gross Proceeds'' derived from the use in such service of musical programs that are attributable to copyrighted recordings. ''Gross Proceeds'' as used in paragraph (a)(3) of this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(b) *Election process.* A Licensee other than a Business Establishment Service shall elect the particular Nonsubscription Service and/or Subscription Service royalty rate categories it chooses (that is, among paragraph (a)(1)(i) or (ii) of this section and/or paragraph (a)(2)(i), (ii) or (iii) of this section) for the License Period by no later than [the date 30 days after these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register**.] Notwithstanding the preceding sentence, where a Licensee has not previously provided a Nonsubscription Service or Subscription Service, as the case may be, the Licensee may make its election by no later than thirty (30) days after the new service first makes a digital audio transmission of a sound recording under the 17 U.S.C. 114 statutory license. Each such election shall be made by notifying the Designated Agent in writing of such election, using an election form provided by the Designated Agent. A Licensee that fails to make a timely election shall pay royalties as provided in paragraphs (a)(1)(i) and (a)(2)(i) of this section, as applicable. Notwithstanding the foregoing, a Licensee eligible to make royalty payments under an agreement entered into pursuant to the Small Webcaster

Settlement Act of 2002 may elect to make payments under such agreement as specified in such agreement.

(c) *Ephemeral Recordings.* The royalty payable under 17 U.S.C. 112(e) for any reproduction of a phonorecord made by a Licensee other than a Business Establishment Service during the License Period, and used solely by the Licensee to facilitate transmissions for which it pays royalties as and when provided in this section and § 262.4 shall be deemed to be included within, and to comprise 8.8% of, such royalty payments. The royalty payable under 17 U.S.C. 112(e) for the reproduction of phonorecords by a Business Establishment Service shall be as set forth in paragraph (a)(3) of this section.

(d) *Minimum fee.*—(1) Business Establishment Services. Each Licensee that is a Business Establishment Service shall pay a minimum fee of $10,000 for each calendar year in which it makes Ephemeral Recordings for use to facilitate transmissions under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), whether or not it does so for all or any part of the year.

(2) *Other Services.* Each Licensee other than a Business Establishment Service shall pay a minimum fee of $2,500, or $500 per channel or station (excluding archived programs, but in no event less than $500 per Licensee), whichever is less, for each calendar year in which it makes eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings for use to facilitate such transmissions, whether or not it does the foregoing for all or any part of the year; except that the minimum annual fee for a Licensee electing to pay under paragraph (a)(2)(iii) of this section shall be $5,000.

(3) *In General.* These minimum fees shall be nonrefundable, but shall be fully creditable to royalty payments due under paragraph (a) of this section for the same calendar year (but not any subsequent calendar year).

(e) *Continuing Obligation.* For the limited purpose of the period immediately following the License Period, and on an entirely without prejudice and nonprecedential basis relative to other time periods and proceedings, if successor statutory royalty rates for Licensees for the period beginning January 1, 2005, have not been established by January 1, 2005, then Licensees shall pay to the Designated Agent, effective January 1, 2005, and continuing for the period through April 30, 2005, or until successor rates and terms are established, whichever is earlier, an interim royalty pursuant to the same rates and terms as are provided for the License Period. Such interim royalties shall be subject to retroactive adjustment based on the final successor rates. Any overpayment shall be fully creditable to future payments, and any underpayment shall be paid within thirty days after establishment of the successor rates and terms, except as may otherwise be provided in the successor terms. If there is a period of such interim payments, Licensees shall elect the particular royalty rate categories it chooses for the interim period as described in paragraph (b) of this section, except that the election for a service that is in operation shall be made by no later than January 15, 2005.

(f) *Other royalty rates and terms.* This part 262 does not apply to persons or entities other than Licensees, or to Licensees to the extent that they make other types of transmissions beyond those set forth in paragraph (a) of this section. For transmissions other than those governed by paragraph (a) of this section, or the use of Ephemeral Recordings to facilitate such transmissions, persons making such transmissions must pay royalties, to the extent (if at all) applicable, under 17 U.S.C. 112(e) and 114 or as prescribed by other law, regulation or agreement.

**§ 262.4 Terms for making payment of royalty fees and statements of account.**

(a) *Payment to designated agent.* A Licensee shall make the royalty payments due under § 262.3 to the Designated Agent.

(b) *Designation of agent and potential successor designated agents.*—(1) Until such time as a new designation is made, SoundExchange, presently an unincorporated division of the Recording Industry Association of America, Inc. (''RIAA''), is designated as the Designated Agent to receive statements of account and royalty payments from Licensees due under § 262.3 and to distribute such royalty payments to each Copyright Owner and Performer entitled to receive royalties under 17 U.S.C. 112(e) or 114(g). SoundExchange shall continue to be designated after its separate incorporation.

(2) If SoundExchange should fail to incorporate by July 1, 2003, dissolve or cease to be governed by a board consisting of equal numbers of representatives of Copyright Owners and Performers, then it shall be replaced by successor entities upon the fulfillment of the requirements set forth in paragraphs (b)(2)(i) and (ii) of this section.

(i) By a majority vote of the nine copyright owner representatives on the SoundExchange Board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

(ii) By a majority vote of the nine performer representatives on the SoundExchange Board as of the last day preceding the condition precedent in paragraph (b)(2) of this section, such representatives shall file a petition with the Copyright Office designating a successor Designated Agent to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 112(e) or 114(g) that have themselves authorized such Designated Agent.

(iii) The Copyright Office shall publish in the **Federal Register** within thirty days of receipt of a petition filed under paragraph (b)(2)(i) or (ii) of this section an order designating the Designated Agents named in such petitions. Nothing contained in this section shall prohibit the petitions filed under paragraphs (b)(2)(i) and (ii) of this section from naming the same successor Designated Agent.

(3) If petitions are filed under paragraphs (b)(2)(i) and (ii) of this section, then, following the actions of the Copyright Office in accordance with paragraph (b)(2)(iii) of this section:

(i) Each of the successor entities shall have all the rights and responsibilities of a Designated Agent under this part 262, except as specifically set forth in this paragraph (b)(3).

(ii) Licensees shall make their royalty payments to the successor entity named by the copyright owner representatives under paragraph (b)(2)(i) of this section (the ''Receiving Agent'') and shall provide statements of account on a form prepared by the Receiving Agent. Licensees shall submit a copy of each statement of account to the collective named by the performer representatives under paragraph (b)(2)(ii) of this section at the same time such statement of account is delivered to the Receiving Agent.

(iii) The Designated Agents shall agree between themselves concerning responsibility for distributing royalty payments to Copyright Owners and Performers that have not themselves authorized either Designated Agent. The

Designated Agents also shall agree to a corresponding methodology for allocating royalty payments between them using the information provided by the Licensee pursuant to the regulations governing records of use of performances for the period for which the royalty payment was made. Such methodology shall value all performances equally. Within 30 days after their agreement concerning such responsibility and methodology, the Designated Agents shall inform the Register of Copyrights thereof.

(iv) With respect to any royalty payment received by the Receiving Agent from a Licensee, a designation by a Copyright Owner or Performer of a Designated Agent must be made no later than 30 days prior to the receipt by the Receiving Agent of that royalty payment.

(v) The Receiving Agent shall promptly allocate the royalty payments it receives between the two Designated Agents in accordance with the agreed methodology. A final adjustment, if necessary, shall be agreed and paid or refunded, as the case may be, between the Receiving Agent and the collectives named under paragraph (b)(2) of this section for each calendar year no later than 180 days following the end of each calendar year. The Designated Agents shall agree on a reasonable basis for the sharing on a pro-rata basis of any costs associated with the allocations set forth in paragraph (b)(3)(iii) of this section.

(vi) If a Designated Agent is unable to locate a Copyright Owner or Performer that the Designated Agent otherwise would be required to pay under this paragraph (b) within 3 years from the date of payment by Licensee, such Copyright Owner's or Performer's share of the payments made by Licensees may first be applied to the costs directly attributable to the administration of the royalty payments due such Copyright Owners and Performers by that Designated Agent and shall thereafter be allocated between the Designated Agents on a pro rata basis (based on distributions to entitled parties) to offset any costs permitted to be deducted by a designated agent under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

(c) *Monthly payments.* A Licensee shall make any payments due under § 262.3(a) by the 45th day after the end of each month for that month, except that payments due under § 262.3(a) for the period from the beginning of the License Period through the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register** shall be due 45 days after the end of such period. All monthly payments shall be rounded to the nearest cent.

(d) *Minimum payments.* A Licensee shall make any payment due under § 262.3(d) by January 31 of the applicable calendar year, except that:

(1) Payment due under § 262.3(d) for 2003, and in the case of a Subscription Service any earlier year, shall be due 45 days after the last day of the month in which these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register**; and

(2) Payment for a Licensee that has not previously made eligible nonsubscription transmissions, noninteractive digital audio transmissions as part of a new subscription service or Ephemeral Recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall be due by the 45th day after the end of the month in which the Licensee commences to do so.

(e) *Late payments.* A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Designated Agent after the due date. Late fees shall accrue from the due date until payment is received by the Designated Agent.

(f) *Statements of account.* For any part of the period beginning on the date these rates and terms are adopted by the Librarian of Congress and published in the **Federal Register** and ending on December 31, 2004, during which a Licensee operates a service, by 45 days after the end of each month during the period, the Licensee shall deliver to the Designated Agent a statement of account containing the information set forth in this paragraph (f) on a form prepared, and made available to Licensees, by the Designated Agent. If a payment is owed for such month, the statement of account shall accompany the payment. A statement of account shall include only the following information:

(1) Such information as is necessary to calculate the accompanying royalty payment, or if no payment is owed for the month, to calculate any portion of the minimum fee recouped during the month, including, as applicable, the Performances, Aggregate Tuning Hours (to the nearest minute) or Subscription Service Revenues for the month;

(2) The name, address, business title, telephone number, facsimile number, electronic mail address and other contact information of the individual or individuals to be contacted for information or questions concerning the content of the statement of account;

(3) The handwritten signature of:

(i) The owner of the Licensee or a duly authorized agent of the owner, if the Licensee is not a partnership or a corporation;

(ii) A partner or delegee, if the Licensee is a partnership; or

(iii) An officer of the corporation, if the Licensee is a corporation;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) If the Licensee is a partnership or a corporation, the title or official position held in the partnership or corporation by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

> I, the undersigned owner or agent of the Licensee, or officer or partner, if the Licensee is a corporation or partnership, have examined this statement of account and hereby state that it is true, accurate and complete to my knowledge after reasonable due diligence.

(g) *Distribution of payments.*—(1) The Designated Agent shall distribute royalty payments directly to Copyright Owners and Performers, according to 17 U.S.C. 114(g)(2); Provided that the Designated Agent shall only be responsible for making distributions to those Copyright Owners and Performers who provide the Designated Agent with such information as is necessary to identify and pay the correct recipient of such payments. The agent shall distribute royalty payments on a basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of sound recordings by Licensees; Provided, however, Performers and Copyright Owners that authorize the Designated Agent may agree with the Designated Agent to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Parties entitled to receive payments under 17 U.S.C. 114(g)(2) may agree with the Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties consistent with the percentages in 17 U.S.C. 114(g)(2).

(2) The Designated Agent shall inform the Register of Copyrights of:

(i) Its methodology for distributing royalty payments to Copyright Owners and Performers who have not themselves authorized the Designated Agent (hereinafter ''nonmembers''), and any amendments thereto, within 60 days of adoption and no later than 30

days prior to the first distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(ii) Any written complaint that the Designated Agent receives from a nonmember concerning the distribution of royalty payments, within 60 days of receiving such written complaint; and

(iii) The final disposition by the Designated Agent of any complaint specified by paragraph (g)(2)(ii) of this section, within 60 days of such disposition.

(3) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Designated Agent's methodology for distributing royalty payments to nonmembers meets the requirements of this section.

(h) *Permitted deductions.* The Designated Agent may deduct from the payments made by Licensees under § 262.3, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments under 17 U.S.C. 112(e) or 114(g) may agree to permit the Designated Agent to make any other deductions.

(i) *Retention of records.* Books and records of a Licensee and of the Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than 3 years.

**§ 262.5 Confidential information.**

(a) *Definition.* For purposes of this part, ''Confidential Information'' shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) *Exclusion.* Confidential Information shall not include documents or information that at the time of delivery to the Receiving Agent or a Designated Agent are public knowledge. The Designated Agent that claims the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) *Use of Confidential Information.* In no event shall the Designated Agent use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto; Provided, however, that the Designated Agent may disclose to Copyright Owners and Performers Confidential Information provided on statements of account under this part in aggregated form, so long as Confidential Information pertaining to any individual Licensee cannot readily be identified, and the Designated Agent may disclose the identities of services that have obtained licenses under 17 U.S.C. 112(e) or 114 and whether or not such services are current in their obligations to pay minimum fees and submit statements of account (so long as the Designated Agent does not disclose the amounts paid by the Licensee).

(d) *Disclosure of Confidential Information.* Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to:

(1) Those employees, agents, attorneys, consultants and independent contractors of the Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of their work, require access to the records;

(2) An independent and qualified auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Designated Agent with respect to the verification of a Licensee's statement of account pursuant to § 262.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty payments pursuant to § 262.7;

(3) The Copyright Office, in response to inquiries concerning the operation of the Designated Agent;

(4) In connection with future Copyright Arbitration Royalty Panel proceedings under 17 U.S.C. 114(f)(2) and 112(e), and under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings, Copyright Arbitration Royalty Panels, the Copyright Office or the courts; and

(5) In connection with bona fide royalty disputes or claims that are the subject of the procedures under § 262.6 or § 262.7, and under an appropriate confidentiality agreement or protective order, the specific parties to such disputes or claims, their attorneys, consultants or other authorized agents, and/or arbitration panels or the courts to which disputes or claims may be submitted.

(e) *Safeguarding of Confidential Information.* The Designated Agent and any person identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Designated Agent or person.

**§ 262.6 Verification of statements of account.**

(a) *General.* This section prescribes procedures by which the Designated Agent may verify the royalty payments made by a Licensee.

(b) *Frequency of verification.* The Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* The Designated Agent must file with the Copyright Office a notice of intent to audit a particular Licensee, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all parties.

(d) *Acquisition and retention of records.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three years. The Designated Agent shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to the Designated Agent, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify

any issues relating to the audit; Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Designated Agent shall pay the cost of the verification procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

**§ 262.7 Verification of royalty payments.**

(a) *General.* This section prescribes procedures by which any Copyright Owner or Performer may verify the royalty payments made by the Designated Agent; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or a Performer and the Designated Agent have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or a Performer may conduct a single audit of the Designated Agent upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior 3 calendar years, but no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must file with the Copyright Office a notice of intent to audit the Designated Agent, which shall, within 30 days of the filing of the notice, publish in the **Federal Register** a notice announcing such filing. The notification of intent to audit shall be served at the same time on the Designated Agent. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of records.* The Designated Agent shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than 3 years. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than 3 years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Designated Agent in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Designated Agent reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of 10% or more, in which case the Designated Agent shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure.

**§ 262.8 Unclaimed funds.**

If a Designated Agent is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty payment under this part, the Designated Agent shall retain the required payment in a segregated trust account for a period of 3 years from the date of payment. No claim to such payment shall be valid after the expiration of the 3-year period. After the expiration of this period, the Designated Agent may apply the unclaimed funds to offset any costs deductible under 17 U.S.C. 114(g)(3). The foregoing shall apply notwithstanding the common law or statutes of any State.

Dated: May 12, 2003.

**David O. Carson,**

*General Counsel.*

[FR Doc. 03–12349 Filed 5–19–03; 8:45 am]

BILLING CODE 1410–33–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[PA203–4207b; FRL–7494–3]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; $NO_X$ RACT Determinations for Lafayette College

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania to establish and require reasonably available control technology (RACT) requirements for Lafayette College, Easton Campus. Lafayette College, Easton Campus, is a major source of nitrogen oxides ($NO_X$) located in Northampton County, Pennsylvania. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by June 19, 2003.

**ADDRESSES:** Written comments should be addressed to Makeba Morris, Acting Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, PO Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Ellen Wentworth at (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, Pennsylvania's Approval of $NO_X$ RACT Determinations for Lafayette College, Easton Campus, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: April 25, 2003.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 03–12475 Filed 5–19–03; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket No. FEMA–P–7631]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

### National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| Source of flooding and location of referenced elevation | *Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|
| | *Existing* | *Modified* | |
| Mile Branch: | | | |
| Approximately 1,320 feet downstream of the Burlington Northern & Santa Fe Railway. | None | *993 | City of Bolivar, Polk County (Unincorporated Areas). |
| Approximately 1,050 feet upstream of 103rd Road | None | *1,075 | |
| Mile Branch Tributary No. 2: | | | |
| Approximately 775 feet downstream of West Parkview | None | *1,005 | City of Bolivar, Polk County (Unincorporated Areas). |
| Approximately 1,520 feet upstream of West Parkview | None | *1,046 | |
| Mile Branch Tributary No. 3: | | | |
| At confluence with Mile Branch | None | *1,012 | City Bolivar. |
| At Limit of Detailed Study | None | *1,056 | |

| Source of flooding and location of referenced elevation | *Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|
| | *Existing* | *Modified* | |
| Mile Branch Tributary No. 4: | | | |
| At confluence with Mile Branch | None | *1,024 | City Bolivar. |
| At Limit of Detailed Study | None | *1,060 | |
| Mile Branch Tributary No. 6: | | | |
| At confluence with Mile Branch | None | *1,046 | City Bolivar. |
| At Limit of Detailed Study | None | *1,064 | |
| Mile Branch Tributary No. 7: | | | |
| At confluence with Mile Branch | None | *1,068 | City Bolivar. |
| At Limit of Detailed Study | None | *1,078 | |
| Southern Tributary to Town Branch: | | | |
| Approximately 2,440 feet downstream of Buffalo Street | None | *996 | City of Bolivar, Polk County (Unincorporated Areas). |
| Approximately 600 feet upstream of Circle Drive | None | *1,052 | |
| Southern Tributary to Town Branch—Tributary No. 1: | | | |
| At confluence with Southern Tributary to Town Branch | None | *1,036 | City Bolivar. |
| At Limit of Detailed Study | None | *1,061 | |
| Town Branch: | | | |
| Approximately 1,750 feet downstream of Broadway Street (State Highway 32) | None | *980 | City of Bolivar, Polk County (Unincorporated Areas). |
| Approximately 1,500 feet upstream of Lakewood Drive | None | *1,081 | |
| Town Branch Tributary No. 1: | | | |
| Approximately 150 feet downstream of East Walnut Street | None | *1,027 | City Bolivar. |
| Approximately 50 feet upstream of Buffalo Street | None | *1,049 | |
| Town Branch Tributary No. 2: | | | |
| Approximately 135 feet downstream from Jefferson Street | None | *1,033 | City Bolivar. |
| At Burlington Northern & Santa Fe Railway | None | *1,055 | |
| Town Branch Tributary No. 3: | | | |
| At confluence with Town Branch | None | *1,070 | City Bolivar. |
| At Limit of Detailed Study | None | *1,081 | |

**Polk County (Unincorporated Areas)**

Maps available for inspection at 102 East Broadway Street, Room 11, Bolivar, MO.

Send comments to Mr. Denzil Roberts, Presiding Commissioner, 102 East Broadway Street, Room 12, Bolivar, MO 65613.

**City of Bolivar**

Maps available for inspection at City Hall, 345 South Main Street, Bolivar, MO.

Send comments to the Honorable Charles Ealy, City Hall, 345 South Main Street, Bolivar, MO 65613.

*North American Vertical Datum.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: May 9, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 03–12580 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**Docket No. FEMA–P–7629**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or

pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Executive Order 12612, Federalism**

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and Recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet.*(NGVD) ◆(NAVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| MO | Seneca (City) (Newton County). | Little Lost Creek | At confluence with Lost Creek | *849 | *847 |
| | | | Approximately 2,650 feet upstream of St. Louise Street. | *874 | *872 |
| | | Lost Creek | Approximately 3,00 feet downstream of Cherokee Avenue. | None | *847 |
| | | | Approximately 3,900 feet upstream of Seneca Avenue. | *863 | *862 |

Maps are available for inspection at the Seneca City Hall, 1303 Cherokee, Seneca, Missouri.

Send comments to The Honorable Gary Roark, Mayor, City of Seneca, 1303 Cherokee Avenue, Seneca, Missouri 64865.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 9, 2003.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 03–12578 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–04–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 030513122–3122–01; ID 050103C]**

**RIN 0648–AR01**

## Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Control Date for Loligo and Illex Squid

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

**ACTION:** Advance notice of proposed rulemaking; notice of a control date for the purposes of controlling capacity in the commercial fishery for *Loligo* squid and discouraging speculative entry into the *Illex* commercial fishery.

**SUMMARY:** NMFS announces that it is considering and is seeking public comment on proposed rulemaking to control future access to the *Illex* (*Illex illecebrosus*) and *Loligo* (*Loligo pealei*) squid fisheries under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This announcement is intended, in part, to discourage speculative entry and increases in effort or capacity in these fisheries while the Mid-Atlantic Fishery Management Council (Council) and NMFS consider alternative allocation schemes and whether and how to further control capacity in the *Illex* and *Loligo* fisheries. The date of publication of this document, May 20, 2003, shall be known as the ''control date'' and may be used for establishing eligibility criteria for determining levels of future access to the *Illex* and *Loligo* fisheries subject to Federal authority.

**DATES:** Written comments must be received on or before 5 p.m., local time, June 19, 2003.

**ADDRESSES:** Comments should be directed to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790. Mark the outside of the envelope, ''Comments on Squid Control Date.'' Comments may also be sent via facsimile (fax) to (302) 674–5399. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 978–281–9273, email: *Paul.H.Jones@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** In the 1990s, the simultaneous growth of the domestic squid fisheries and reduction in the estimate of sustainable yield resulted in the *Illex* and *Loligo* fisheries moving toward full capitalization and exploitation. As a result, limited entry programs became necessary and were implemented separately for each fishery in Amendment 5 to the Fishery Management Plan (FMP) (Loligo squid at 61 FR 14465, April 2, 1996 and Illex squid at 62 FR 28638, May 27, 1997).

In the case of the *Illex* fishery, a 5–year sunset provision was placed on the *Illex* moratorium when it was implemented through Amendment 5 to the FMP, due to concerns that capacity might prove to be insufficient to fully exploit the annual quota for the fishery. The sunset provision for the moratorium on entry into the Illex fishery, implemented in 1997, was set to expire in July 1, 2002. It was extended through July 1, 2003, under Framework 2 to the FMP (67 FR 44392, July 2, 2002) and is currently being considered for an additional extension through July 1, 2004, under Framework 3 to the FMP (68 FR 14571, March 26, 2003). The Council is addressing this issue through development of Amendment 9 to the FMP. However, the Council is concerned that a hiatus in the Illex limited access program could occur should the moratorium for this fishery expire before Amendment 9 is implemented. At its March 20, 2003, meeting, the Council requested that NMFS publish an advance notice of proposed rulemaking issuing this control date to discourage speculative entry into the *Illex* fishery, should such a hiatus occur.

In the case of the *Loligo* fishery, the primary issue the Council is concerned with is excess and/or latent capacity. Quota management in this fishery, in conjunction with restrictions in other fisheries, has created a derby fishery in certain quota periods of the *Loligo* fishery. Therefore, the Council has expressed a need to examine excess capacity and/or latent capacity in the limited entry section of this fishery. Accordingly, at its March 20, 2003, meeting, the Council requested that NMFS also publish this control date to discourage speculative activation of previously unused effort or capacity in the *Loligo* fishery while alternative allocation schemes and potential management regimes to control capacity or latent effort are discussed and possibly developed and implemented. The control date communicates to fishermen that performance or fishing effort after the date of publication may not be treated the same as performance or effort that was expanded before the control date. The Council could choose different and variably weighted methods to qualify fishermen based on the type and length of participation in the Loligo fishery or on the quantity of landings. The Council may also choose to take no further action to control entry or access to the *Loligo* fishery.

This notification establishes May 20, 2003, as the control date for potential use in determining historical or traditional participation in the Loligo and Illex fisheries. Consideration of a control date does not commit the Council to develop any particular management regime or criteria for participation in these fisheries. The Council may choose a different control date; or may choose a management program that does not make use of such a date. Any action by the Council will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the Loligo and Illex fisheries in Federal waters.

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

Dated: May 15, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 03–12648 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 68, No. 97

Tuesday, May 20, 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.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Public Information Collections being Reviewed by the U.S. Agency for International Development; Comments Requested

**SUMMARY:** U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including the information shall have practical utility; (b) the accuracy of the burden estimates; (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:** Submit comments on or before July 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or vis e-mail *bjohnson@usaid.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB No:* OMB 0412–0020.

*Form. No.:* AID 1450–4.

*Title:* Supplier's Certificate and Agreement with the U.S. Agency for International Development for Project Commodities/Invoice and Contract Abstract.

*Type of Review:* Renewal of Information Collection.

*Purpose:* When USAID is not a party to a contract which it finances, it needs some means of collecting information directly from the suppliers of such commodities and related services to enable it take appropriate action in the event that they do not comply with applicable USAID regulations. The information collection, recordkeeping, and reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies. It also allows for positive identification of transactions where overcharges occur.

*Annual Reporting Burden:*

*Respondents:* 60.

*Total annual responses:* 360.

*Total annual hours requested:* 231 hours.

Dated: May 13, 2003.

**Joanne Pasker**

*Chief, Information and Records Division, Office of Administrative Service, Bureau of Management.*

[FR Doc. 03–12591 Filed 5–19–03; 8:45 am]

BILLING CODE 6116–01–M

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Public Information Collection being Reviewed by the U.S. Agency for International Development; Comments Requested

**SUMMARY:** U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: (a) whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (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:** Submit comments on or before July 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB No:* OMB 0412–0017.

*Form No.:* AID 1440–3.

*Title:* Contractor's Certificate and Agreement with the U.S. Agency for International Development/Contractor's Invoice and Contract Abstract

*Type of Review:* Renewal of Information Collection.

*Purpose:* USADI finances host country contracts, for technical and professional services and for the construction of physical facilities, between the contractors for such services and entities in teh country receiving assistance under loan or grant agreements with the recipient country. USAID is not a party to these contracts, and the contracts are not subject to the FAR. In its role as the financing agency, USAID needs some means of collecting information directly from the contractors supplying such services so that it may take appropriate action in the event that the contractor does not comply with applicable USAID regulations. The information collection, recordkeeping, and reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies.

*Annual Reporting Burden:*

*Respondents:* 25.

*Total annual responses:* 300.

*Total annual hours requested:* 175 hours.

Dated: May 13, 2003.

**Joanne Paskar,**

*Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.*

[FR Doc. 03–12592 Filed 5–19–03; 8:45 am]

BILLING CODE 6116–01–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Oregon Coast Provincial Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Oregon Coast Province Advisory Committee will meet in Corvallis, OR, May 29, 2003. The theme of the meeting is Introduction/Overview/Business Planning. The agenda includes: Orientation of the NW Forest Plan; Set Future Meetings and Topics—Monitoring Field Trip; Lower Siuslaw Sub-Committee Update/Round Robin and Public Input.

**DATES:** The meeting will be held May 29, 2003, beginning at 9 a.m.

**ADDRESSES:** The meeting will be held at the LaSells Stewart Center, 100 LaSells Stewart Center, Oregon State University, Corvallis, Oregon 97331.

**FOR FURTHER INFORMATION CONTACT:** Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to Siuslaw National Forest Supervisor, P.O. Box 1148, Corvallis, OR 97339.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Council Discussion is limited to Forest/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 3:15 p.m. for fifteen minutes. The meeting is expected to adjourn around 3:30 p.m.

Dated: May 13, 2003.

**George Buckingham,**

*District Ranger.*

[FR Doc. 03–12534 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Modoc County RAC Meetings

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, June 9, in Alturas, California. The meetings are open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting June 9, begins at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of May 12 Minutes, consideration of new projects for funding in 2004, and discuss community outreach for projects for fiscal year 2004 that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, provide economic benefits and restore and improve health and water quality that meet the intent of Public Law 106–393. Time will also be set aside for public comments at the beginning of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

**Stanley G. Sylva,**

*Forest Supervisor.*

[FR Doc. 03–12533 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Availability of Finding of No Significant Impact and Environmental Assessment for the Environmental Quality Incentives Program

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Natural Resources Conservation Service (NRCS) has prepared a Finding of No Significant Impact (FONSI) and an Environmental Assessment (EA) consistent with the National Environmental Policy Act (NEPA) of 1969, as amended, to implement the Environmental Quality Incentives Program, which is authorized by 16 U.S.C. 3839aa. Upon review of the analysis of potential environmental impacts from a national perspective, the Chief of NRCS found that the program would not result in a significant impact on the quality of the human environment, particularly when focusing on the significant adverse impacts that NEPA is intended to help decision-makers avoid and mitigate against. Therefore, a FONSI was issued, and no environmental impact statement is required for national implementation of the program.

**DATES:** To ensure consideration, comments on the EA and FONSI must be postmarked on or before June 19, 2003.

**ADDRESSES:** Comments must be sent to Charles Whitmore, Acting Director, Conservation Operations Division, NRCS, U.S. Department of Agriculture, P.O. Box 2890, Room 6034–S, Washington, DC 20013–2890.

**FOR FURTHER INFORMATION CONTACT:** Copies of the FONSI, the Final EA, or additional information on matters related to this **Federal Register** Notice can be obtained by contacting one of the following individuals at the addresses and telephone numbers shown below:

Mr. Anthony Esser, Environmental Quality Incentives Program Manager, Conservation Operations Division, NRCS, U.S. Department of Agriculture, P.O. Box 2890, Room 6039–S, Washington, DC 20013–2890, Telephone: (202) 720–1840. Ms. Andrée DuVarney, National Environmental Specialist, Ecological Sciences Division, NRCS, U.S. Department of Agriculture, P.O. Box 2890, Room 6158–S, Washington, DC 20013–2890, Telephone: (202) 720–4925.

**SUPPLEMENTARY INFORMATION:**

#### Description of the Proposed Action

The Environmental Quality Incentives Program (EQIP) is a voluntary program providing technical and financial assistance to agricultural producers for planning and implementing natural resource conservation practices on their farms and ranches. The purposes of EQIP, as amended by the 2002 Act, are to promote agricultural production and environmental quality as compatible national goals, and to optimize environmental benefits. The need to which NRCS is responding by proposing action is the need to implement EQIP as amended by the 2002 Act in a manner that achieves the purposes for which Congress authorized EQIP, including:

1. Assisting producers to comply with local, State, and national regulatory requirements concerning soil, water, and air quality; wildlife habitat; and surface and groundwater conservation;

2. Assisting producers to address national, State, Tribal, and local resource concerns so that there is no need for resource and regulatory programs;

3. Providing flexible assistance to producers to install and maintain conservation practices that enhance soil, water, related natural resources (including grazing lands and wetlands), and wildlife, while sustaining production of food and fiber; and

4. Assisting producers to make beneficial, cost-effective changes to cropping systems, grazing management, nutrient management associated with livestock, pest or irrigation management, or other practices on agricultural land.

### Alternatives Analyzed

The allocation of EQIP funds is the only major program decision made at the national level that has an impact on the quality of the human environment because of the authority and flexibility that must be given to the NRCS State Conservationists to meet the program purposes, and because funding affects where practices will be implemented. NRCS considered three alternatives describing ways to allocate EQIP funds to the States, including allocating EQIP funds based on a national allocation formula, allocating EQIP funds in equal amounts to all States, or a no action alternative. The 2002 Act authorized the expenditure of additional, separate funds for promotion of ground and surface water conservation, so a separate set of alternatives addressed allocation of those funds, including allocating Ground and Surface Water Conservation (GSWC) funds based on an annual national evaluation of critical ground and surface water conservation needs, allocating the GSWC funds in equal amounts to all States, or a no action alternative.

The EA describes potential impacts associated with the alternatives described. The alternatives did not directly result in impacts to the quality of the human environment, but they do have an indirect effect on the geographic location of acres treated by EQIP funded conservation practices. The discussion under each alternative focused on the effects that the decision alternatives would have on where conservation practices would most likely be implemented. NRCS developed network diagrams depicting the chain of natural resource effects resulting from the application of each practice. Based on the analysis, NRCS determined that the use of a national allocation formula best ensured that funds were distributed in a manner that environmental benefits are optimized, and States and Territories with the most significant environmental and natural resource concerns can effectively address national conservation priorities.

### Finding of No Significant Impact

Upon review of the analysis of potential environmental impacts associated with the selected alternatives, the Chief of NRCS found that, from a national perspective, the program would not result in a significant impact on the quality of the human environment, particularly when focusing on the significant adverse impacts that NEPA is intended to help decision-makers avoid and mitigate against. Because of the potential to affect one type of resource while improving the condition of another resource, there may, at times, be minimal site-specific adverse environmental effects, individually or cumulatively. As in the past administration of EQIP, NRCS will continue to prepare documentation of an environmental evaluation on a site-specific level, and will consult with the appropriate entities to avoid, reduce, or mitigate adverse impacts on protected resources. NRCS will also comply with requirements protecting unique geographic features and other resources, as well as policies protecting natural resources. To the extent that other NRCS EQIP activities may result in significant effects to the quality of the human environment, a State or area-wide EA or Environmental Impact Statement may be prepared separately from the National EA. Therefore, a FONSI was issued and no environmental impact statement is required to support national implementation of the program.

Copies of the EA and FONSI may be reviewed at the following location: Conservation Operations Division, NRCS, U.S. Department of Agriculture, Room 5227–S, Washington, DC 20013–2890. The documents may also be accessed on the Internet, at *http://www.nrcs.usda.gov/programs/EnvAssess/EQIP/EQIP.html.*

Signed in Washington, DC, on May 8, 2003.

**Bruce I. Knight,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 03–12526 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–16–P

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## DEPARTMENT OF AGRICULTURE

## Rural Business-Cooperative Service

## Notice of Funding Availability (NOFA) Inviting Applications for a University Value-Added Research Grant

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice announces the availability of $300,000 in fiscal year (FY) 2003 to fund a grant for research at a university concerning the effects of projects for value-added agricultural commodities or products on agricultural producers and the commodity markets. Only qualified universities are eligible to apply. This Notice lists the information needed to submit an application for these funds.

**DATES:** The deadline for receipt of an application is 4 p.m. EST on July 29, 2003. Comments regarding the information collection requirements under the Paperwork Reduction Act of 1995 must be received on or before July 21, 2003.

**ADDRESSES:** The address for hand-delivered applications or applications submitted using an express mail or overnight courier service is: Marc Warman, USDA Rural Business-Cooperative Service, 1400 Independence Ave., SW., Room 4016, Washington, DC 20250; Telephone: (202) 720–8460. Applications sent via the U.S. Postal Service must be sent to the following address: Marc Warman, USDA Rural Business-Cooperative Service, STOP 3252, 1400 Independence Ave., SW., Washington, DC 20250–3252. Applications sent via email attachment must be sent to the following address: *marc.warman@usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jim Haskell, Acting Deputy Administrator, Rural Business-Cooperative Service, USDA, Stop 3250, Room 4016, 1400 Independence Ave., SW., Washington, DC 20250–3250, telephone: (202) 720–8460, or email: *james.haskell@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Programs Affected

The research funded by this grant relates to a program listed in the Catalog of Federal Domestic Assistance Program under the assigned number 10.352 (Value-Added Grants). This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

### Paperwork Reduction Act

The information collection requirements contained in this Notice have received temporary emergency clearance by the Office of Management and Budget (OMB) under Control Number 0570–0046. However, in accordance with the Paperwork Reduction Act of 1995, RBS will seek standard OMB approval of the reporting requirements contained in this Notice and hereby opens a 60-day public comment period.

*Title:* Value-Added University Research Grant.

*Type of Request:* New Collection.

*Abstract:* This program will be administered by Cooperative Services within the Rural Business-Cooperative Service. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, signed May 13, 2002) authorized the Secretary of the U.S. Department of Agriculture (USDA) to award a grant to support research at a university concerning the effects of projects for value-added agricultural commodities

or products on agricultural producers and the commodity markets.

This is a competitive grant program; it does not have a matching funds requirement. The Notice Inviting Applications sets forth the policies and procedures associated with the grant application and evaluation procedures and ongoing administration requirements for the grant award. The paperwork burden associated with the application process and ongoing reporting is included in this collection.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 17.7 hours per response.

*Estimated Number of Respondents:* 15.

*Estimated Number of Responses per Respondent:* 1.8.

*Estimated Number of Responses:* 27.

*Estimate of Total Annual Burden on Respondents:* 478.5 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0039.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Program Administration**

The program is administered by the Office of Cooperative Services within the Agency.

**Background**

Section 6402 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Farm Bill) authorized a new grant initiative to establish up to 15 agriculture innovation demonstration centers (Agriculture Innovation Centers or AICs) with the intent of fostering the ability of agricultural producers to reap the benefits of producing and marketing value-added products. Section 6402(g) also provided that the Secretary shall use $300,000 of the funds made available for that section to support research into the effects of value-added projects on agricultural products and commodity markets. This Notice relates to the $300,000 research grant authorized in section 6402(g).

**Definitions**

*Agency*—Rural Business-Cooperative Service (RBS), an agency of the United States Department of Agriculture (USDA), or its successor agency.

*Cooperative Services*—The office within RBS, and its successor organization, that administers programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451 *et seq.*) and such other programs so identified in USDA regulations.

*Fixed equipment*—Tangible personal property used in trade or business that would ordinarily be subject to depreciation under the Internal Revenue Code, including processing equipment, but not including property for equipping and furnishing offices such as computers, office equipment, desks or file cabinets.

*Independent Producers*—Agricultural producers, to include individuals, for profit and not for profit corporations, LLCs, partnerships or LLPs, when these entities are solely owned or controlled by producers who do not produce the agricultural product under contract or joint ownership with any other organization. An independent producer can also be a steering committee composed of independent agricultural producers in the process of organizing an association to operate a value-added venture that is owned and controlled by the independent producers supplying agricultural products to the market.

*National Office*—The Agency office at USDA headquarters in Washington, DC.

*Nonprofit institution*—Any organization or institution, including an accredited institution of higher education, no part of the net earnings of which may inure to the benefit of any private shareholder or individual.

*Product segregation*—Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

*Public body*—Any state, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or Indian tribe on federal or state reservations or other federally recognized Indian tribe in rural areas.

*Rural and rural area*—Includes all the territory of a state that is not within the outer boundary of any city or town having a population of 50,000 or more and the urbanized area contiguous and adjacent to such city or town, as defined by the U.S. Bureau of the Census using the latest decennial census of the United States.

*Rural Development*—A mission area within the USDA consisting of the Office of the Under Secretary, the Office of Community Development, the Rural Business-Cooperative Service, the Rural Housing Service and the Rural Utilities Service and their successors.

*State*—Includes each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, as may be determined by the Secretary to be feasible, appropriate and lawful, the Freely Associated States and the Federated States of Micronesia.

*State Office*—USDA State Rural Development offices for the applicable states.

*Value-Added*—The incremental value that is realized by the producer from an agricultural commodity or product as the result of (1) a change in its physical state, (2) differentiated production or marketing, as demonstrated in a business plan, or (3) product segregation. Also, the economic benefit realized from the production of farm or ranch-based renewable energy. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.

**Eligibility Requirements**

1. The applicant must be an accredited university.

2. The applicant must have the capacity, including a well developed econometric model or the equivalent, to conduct the study.

3. The applicant must have a demonstrated record of conducting the type of study to be funded.

4. The applicant must demonstrate that studies proffered under item (3) above have been subjected to peer review and the peer reviews found the studies to be credible.

5. A university may participate in more than one application.

6. The description of the research proposed to be done using grant funds must conform to the eligible uses for the funds.

7. An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a grant award.

**Uses of Grant Funds**

Grant funds are to be used to perform a study of the effects of projects for value-added agricultural commodities or products on agricultural producers and the commodity markets. The universe of projects studied shall include, but is not necessarily limited to, value-added projects funded by USDA pursuant to section 231 of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1621 *note*).

1. The study must systematically examine, using linked, long-term, global projections of the agricultural sector, the potential effects of the value-added projects identified by the study on (a) the demand for agricultural commodities, (b) market prices, (c) farm income and (d) Federal outlays on commodity programs. The study must include an assessment of the effectiveness of the agricultural innovation centers funded pursuant to section 6402 of the 2002 Farm Bill.

2. Grant funds may be used to assess the performance of USDA value-added program grant recipients, including agricultural innovation centers as part of the study.

3. Grant funds may be used to assess the requirements imposed by USDA on agricultural innovation centers to determine which have the effect of maximizing the positive effects of the services provided by these centers on (a) the demand for agricultural commodities, (b) market prices, (c) farm income and (d) Federal outlays on commodity programs.

4. Grant funds may be used to subcontract component parts of the study with prior USDA written approval.

5. Grant funds may be used to develop data series directly related to the research effort, where such data are not otherwise available.

**Ineligible Uses of Grant Funds**

1. Developing computer applications for performing the study, other than minor modifications to a fully operational model or software application. ''Minor modifications'' may not, in the aggregate, exceed 5 percent of the total grant award.

2. Construction (in any form).

3. Improvement, refurbishment or renovation of the grantee's research, education or extension space.

4. Planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

5. Repair or maintenance of privately owned vehicles.

6. Purchase of real estate.

7. Paying obligations incurred before the date of grant approval or after the end of the grant period.

8. General operating costs other than the allowed indirect cost rate.

9. Any other purpose prohibited in 7 CFR parts 3015 and 3019, as applicable.

**Program Restrictions**

Grant funds are to be used only to perform the research effort. All travel using Federal funds must be directly related to the research effort as described in the applicable grant agreement. Use of Federal funds for attendance at non-related meetings must have prior written approval by USDA. Travel and per diem expenses will not exceed those paid to federal agency employees. Rates are based upon location. Rate information can be accessed on the Internet at *http://policyworks.gov/perdiem.* Recipients will be restricted to traveling coach class on common carrier airlines. Meals and incidental expenses will be reimbursed at a rate not to exceed that used by federal agency employees. Mileage and gas reimbursement will be at a rate not to exceed that used by federal agency employees.

**Grant Award Selection Process**

1. *Initial Screening.* The Agency will screen each application to determine eligibility during the period immediately following the application deadline.

2. *Rating and Ranking.* Applications will be rated and ranked by a review panel based on the ''Evaluation Criteria and Weights'' contained in this Notice. If there are tied scores after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for ''Nature of the Proposed Research'' and the applicant with the highest score in that category will receive a higher ranking. If the scores for ''Nature of the Proposed Research'' are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

**Evaluation Criteria and Weights**

*1. Nature of the Proposed Research (Maximum 35 points)*

The description of the proposed research must be detailed and should include an explanation of how the applicant will systematically examine, using linked, long-term, global projections of the agricultural sector, the effects of value-added projects on the following: (a) Demand for agricultural commodities, (b) market prices, (c) farm income, and (d) Federal outlays on commodity programs. Proposals substantively addressing all four areas will score higher than proposals that do not. Any econometric model used for the examination must be explained with an emphasis on how the model has been developed, the key assumptions incorporated within the model, how the model is used, any peer review of the model, and how the applicant has used the model to date, with an evaluation of its effectiveness. Proposals demonstrating solidly developed models designed for agricultural analysis that have been peer reviewed and used for analysis similar to the proposal will receive more points than proposals discussing untried models. The description should also include what data will be used and how it was or will be gathered. Proposals demonstrating that the applicant already has access to the data will score higher than proposals indicating that the data needs to be gathered. Proposals demonstrating good quality control methods for data collection will score higher than those proposals lacking in quality control methods for data collection.

*2. Qualifications of the Researchers (Maximum 20 points)*

The qualifications of the researchers who will be involved with the proposed research must reflect an ability to perform the study. High education levels and experience in conducting agricultural or value-added research will receive more points than economic research not related to agriculture. Publications of work in the value-added and agricultural fields will receive more points than publications not so related. For each of these research efforts and publications, points will be awarded for evidence that the research was favorably reviewed by scholastic peers as evidenced by citations to this research in peer research publications. Those

who can demonstrate favorable peer reviews of research in value-added agriculture will receive more points than positively reviewed research in other areas.

*3. Work Plan/Budget (Maximum 20 points)*

The work plan and budget will be reviewed for specificity, realistic timetables and detail. Logical, realistic, and economically efficient plans and budgets will result in higher scores.

*4. Measuring Effectiveness of Value-Added Projects (Maximum 25 points)*

Proposals that address performance measures applicable to a wide range of value-added products and for various stages of producer organizational development, will receive more points than those with a more narrow range of applicability. Also, those proposals that can effectively demonstrate that performance measures contain predictive success or failure thresholds will receive higher scores.

**Deliverables**

Interim and final project deliverables, inclusive of supporting documentation, are due in the form and on the due dates as specified in the applicable grant agreement.

**Grant Amounts**

USDA reserves the right to make a single grant award or multiple smaller awards. In the event an applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or de-obligate the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

**Other Considerations**

1. *Environmental review.* Any grant made by the Agency is subject to the requirements of 7 CFR part 1940, subpart G or its successor regulation. Some applications may be generally excluded from the environmental review process by 7 CFR 1940.333. Applicants for grant funds must consider and document within their plans the important environmental factors and the potential environmental impacts of the activity proposed in the grant application.

2. *Civil rights.* Any grant made is subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color and national origin as outlined in 7 CFR part 1901, subpart E. In addition, any grant made under this subpart is subject to the requirements of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability; the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; and titles II and III of the Americans with Disabilities Act, which prohibits discrimination on the basis of disability in places of public accommodations. This program will also be administered in accordance with 7 CFR part 15, subpart A and all other applicable Civil Rights laws.

3. *Other USDA regulations.* This grant program is subject to the provisions of the following regulations, as applicable: (a) 7 CFR part 3015, Uniform Federal Assistance Regulations, (b) 7 CFR part 3017, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), (c) 7 CFR part 3018, New Restrictions on Lobbying, and (d) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations.

4. *Audit requirements.* Any grantee must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

**Grant Closing**

1. *Letter of conditions.* The Agency will notify an approved applicant in writing, setting out the conditions under which the grant will be made.

2. *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return the Agency's ''Letter of Intent To Meet Conditions,'' or, if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

3. *Grant agreement.* The grantee must enter into a grant agreement with USDA in form and substance similar to the form of agreement as published at the end of this NOFA prior to the advance of funds.

**Award Requirements**

Any approved applicant will be required to do the following:

1. Execute a ''Request for Obligation of Funds''. The following statement will be entered in the comment section of the Request for Obligation of Funds, and must be signed by the grantee:

''The grantee certifies that it is in compliance with and will continue to comply with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in 7 CFR parts 3015, 3017, 3018, 3019 and 3052 in effect on the date of grant approval, and the approved Letter of Conditions.''

2. Use SF–270 ''Request for Advance or Reimbursement'' to request advances or reimbursements, as applicable, but not more frequently than once a month. (This form can be downloaded from the following Web site: *http://www.whitehouse.gov/omb/grants/sf270.pdf*);

3. Maintain a financial management system that is acceptable to the Agency;

4. Collect and maintain data on race, sex and national origin of the beneficiaries of the project.

**Reporting Requirements**

Grantee must submit the following to the Agency;

1. A ''Financial Status Report'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

2. Semi-annual performance reports that compare accomplishments to the milestones stated in the proposal. Identify all tasks completed to date and provide documentation supporting the reported results. If the original schedule provided in the work plan for interim and final project deliverables is not being met, the report should discuss the problems or delays that may affect completion of the study. Objectives for the next reporting period should be listed. Compliance with any special condition on the use of award funds should be discussed. Reporting periods end each March 31 and September 30. Reports are due 30 days after the reporting period ends.

**Grant Servicing**

The grant will be serviced in accordance with 7 CFR parts 1951, 3015 and 3019. Grantee will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

**Performance Reviews**

1. USDA will provide for peer review of the deliverables in the grant agreement.

2. USDA may elect to suspend or terminate a grant in all or part if USDA determines (a) that the grantee or subcontractor has demonstrated insufficient progress in complying with the terms of the grant agreement, or (b) such other cause as USDA identifies in writing to the grantee (including but not limited to the use of federal grant funds for ineligible purposes).

**Grant Disbursement**

The Agency will determine, based on 7 CFR parts 3015 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement.

**Contents of Application Package**

A complete application for a value-added research grant must include the following:

1. A summary page listing the following items. This information should be double-spaced between items and not in narrative form.

(a) Name of applicant.

(b) Address of applicant.

(c) Telephone number of applicant.

(d) Contact person name, telephone number and email address.

(e) Fax number of applicant.

(f) Name of eligible university (if different from applicant).

(g) County where eligible university is located.

(h) Congressional district number where applicant is located.

(i) Amount of grant request.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. A summary of the research to be performed, no longer than five pages, which must include the following items.

(a) The universe of value-added activities to be studied.

(b) The nature and quality of the data to be used in the study.

(c) The method by which the value added producer grant and agricultural innovation center programs funded by USDA will be evaluated and incorporated into the overall study.

(d) The proposed form of output of the results of the study.

4. Organizational documents confirming the accreditation of the eligible university.

5. Eligibility. The application must include a detailed discussion of how the applicant meets each of the eligibility requirements.

6. Evaluation Criteria. Address each of the evaluation criteria specifically and individually by category in narrative form.

(a) *Nature of the Proposed Research.* Describe the proposed research in detail. The description should include an explanation of how the applicant will systematically examine, using linked, long-term, global projections of the agricultural sector, the potential effects of value-added projects on the following: (i) Demand for agricultural commodities, (ii) market prices, (iii) farm income, and (iv) Federal outlays on commodity programs. Any econometric model used for the examination must be explained with an emphasis on how the model has been developed, its intended use, any peer review of the model, and how the applicant has used the model to date, with an evaluation of its effectiveness. The description should also include what data will be used and how it was or will be gathered, including measures to be taken to ensure quality control in data collection.

(b) *Qualifications of the Researchers.* Describe the qualifications of the researchers who will be involved with the proposed research. Discuss education levels and experience levels of the researchers with an emphasis on any prior experience conducting agricultural or value-added research. Also describe any research efforts and publications completed by the researchers.

(c) *Work Plan/Budget.* The budget must present a detailed line item breakdown of estimated costs associated with the proposed research and allocate these costs to each of the tasks to be undertaken. The work plan must present the order the tasks will be undertaken and the estimated time for completing each task. Categories such as salaries, administrative, other and indirect costs must be clearly identified for each task and each task must be clearly defined and described in detail. Include supporting documentation for each category.

(d) *Measuring Effectiveness of Value-Added Projects.* Describe appropriate performance measures that the applicant believes should be used to evaluate the success of value-added activities in agriculture. Suggested measures should evaluate both outputs and outcomes of producer value-added activities and be easily and objectively measured.

7. Proposed criteria to be used for performance evaluation. The Agency seeks applicant input for performance criteria to be utilized in developing the grant agreement. The performance criteria suggested by the applicant are not binding on the Agency.

8. Identify and report any association or relationship with Rural Development employees.

9. *Required forms.* The following forms must be completed, signed and submitted as part of the application package.

(a) SF–424, ''Application for Federal Assistance.'' Do not submit Form SF–424A, ''Budget Information.'' A separate line item budget should be presented as described in item 6(c) of this section listing the contents of the application package. All costs must be categorized as either eligible or ineligible.

(b) SF–424B, ''Assurances—Non-Construction Programs.''

(c) Form AD–1047, ''Certification Regarding Debarment, Suspension and other Responsibility Matters—Primary Covered Transactions.''

(d) Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements.''

(e) Form RD 400–1, ''Equal Opportunity Agreement.''

(f) Form RD 400–4, ''Assurance Agreement.''

(g) SF-LLL, ''Disclosure of Lobbying Activities,'' if applicable; otherwise, a Certification of Non-Lobbying Activities in a form satisfactory to the Agency.

The required application forms and certifications can be downloaded from the following Web site: *http://www.rurdev.usda.gov/rhs/rcdi/rcdi_forms.htm.*

**Form of Submission**

Applicants and grant awardee are encouraged, but not required, to submit applications and reports in electronic form. A complete, original application may be electronically sent as an e-mail attachment to *marc.warman@usda.gov.* If applications are submitted electronically, a signature page must be submitted via facsimile to the attention of Marc Warman at (202) 720–4641 or in hard copy to Marc Warman at the address provided at the beginning of this Notice. Alternatively, an original application package plus two paper copies may be submitted to the addresses provided at the beginning of this Notice.

Dated: May 10, 2003.

**Thomas C. Dorr,**

*Under Secretary, Rural Development.*

**University Value-Added Research Grant Agreement**

*This grant agreement* (Agreement) dated `lll`, is a contract for receipt of grant funds pursuant to section 6402(g) of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) (7 U.S.C. 1621 note). These requirements do not supercede the applicable requirements for receipt of Federal funds

stated in 7 CFR parts 3015, ''Uniform Federal Assistance Regulations'' or 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.''

*Between* lllllllll(Grantee) and the United States of America acting through the Rural Business-Cooperative Service (RBS), Department of Agriculture, (Grantor).

*Witnesseth:*

All references herein to ''Value-Added Research'' refer to the proposal submitted by Grantee and approved by Grantor for evaluating the effects of projects for value-added agricultural commodities or products on agricultural producers and the commodity markets which is attached as Exhibit A. The principal amount of the grant is $300,000 (Grant Funds).

*Whereas*

Grantee has proposed to conduct the research described in the proposal as approved by Grantor;

Grantee is an accredited university for purposes of granting undergraduate and graduate degrees;

The Grantee is able to finance or directly fund any amounts as may be necessary to supplement Grant Funds in order to ensure that sufficient funds are available for the Value-Added Research;

Grantee has provided a total budget and funding schedule, acceptable to the Grantor, for how the Grant Funds and other funds (if applicable) are to be spent which is attached as Exhibit B;

The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor. Provided, however, that any Grant Funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement, including satisfactory performance reviews, or the applicable regulation(s) and applicable Notice of Funding Availability (NOFA).

As a condition of this Agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those contained in 7 CFR 3015.205(b) and the NOFA, or referenced therein, and that are hereby incorporated into this agreement by reference and such other statutory provisions as are specifically contained herein.

*Now, therefore,* in consideration of said grant, Grantee agrees to:

A. Cause said Value-Added Research to be conducted, within one year of the date of this Agreement, within the total sums, including Grant Funds, available to the Grantee.

B. Provide periodic reports to the Grantor and respond promptly and completely to requests for status updates on the Value-Added Research by a representative of the Grantor. The reports to be provided in form and substance satisfactory to the Grantor are as follows:

1. A ''Financial Status Report'' listing expenditures according to agreed upon budget categories, on a semi-annual basis. Reporting periods end each March 31 and September 30. Financial Status Reports are due 30 days after the reporting period ends.

2. A ''Performance'' report that compares accomplishments to the objectives stated in the proposal. This report will identify all tasks completed to date and include documentation supporting the reported results. If the original schedule agreed to by the Grantor is not being met, this report will discuss the problems or delays, explain why the original objectives were not met and establish the objectives for the next reporting period. Reporting periods end each March 31 and September 30. Performance reports are due 30 days after the reporting period ends.

These reports are to be submitted in an electronic form acceptable to the Grantor at the following address:

*marc.warman@usda.gov.*

At the option of the Grantee, reports may be submitted in hard copy (one copy) to the following address:

Marc Warman, Program Leader, USDA Rural Business-Cooperative Service, Stop 3252, Room 4016, 1400 Independence Ave., SW., Washington, DC 20250–3252. Telephone (for courier deliveries): (202) 690–1431.

Grantor may change the name and address for report submissions upon written notice to Grantee.

C. Provide the following deliverables on the dates specified:

1. Preliminary impact study of value-added activities other than the value added producer grant and agricultural innovation center programs funded by USDA no later than 6 months from date of Agreement. This deliverable should discuss what the experience of other value-added efforts suggests can be incorporated in USDA's implementation of the value added producer grant and agricultural innovation center in order to maximize the benefits of these value-added programs to agricultural producers and commodity markets.

(a) This deliverable should report what have been the most challenging or unexpected aspects of developing value-added businesses with respect to agricultural products and commodities.

(b) This deliverable should also report what other value-added project participants would, if they had the opportunity, have done differently.

2. First year evaluation reports for the value added producer grant and agricultural innovation center programs funded by USDA no later than 1 year from date of the last grant award for the applicable program obligated in fiscal year 2003. A separate evaluation report for each program will be prepared.

The evaluation report on the value-added producer grant should include a brief assessment of each project, a conclusion as to whether the project was successful, a quantitative assessment of the benefit realized by the grant recipient as a result of the project to date and a quantitative assessment of the benefit that may reasonably be expected to accrue to the grant recipient as a result of the project.

The evaluation report on the agricultural innovation center program should include an assessment of the number of agricultural producers that received services, a breakdown of services provided (expressed by hours per type of service), areas of needed improvement and a quantitative assessment of benefits directly realized as a result of services provided by each center.

Each report generated for this deliverable should:

(a) Report what have been the most challenging or unexpected aspects of developing value-added businesses with respect to agricultural products and commodities.

(b) Report what the value-added project participants would, if they had the opportunity, have done differently.

(c) An assessment of what information and reports are appropriate for ongoing program performance monitoring by USDA of grant recipients under each value-added grant program.

(d) An assessment of the extent USDA's implementation of each USDA Value-Added program maximizes the positive effects of each program on (i) the demand for agricultural products, (ii) market prices, (iii) farm income and (iv) Federal outlays on commodity programs and where improvement is needed.

3. Final report on the impacts of value-added activities, including activities being conducted by state and private entities, on (a) the demand for agricultural products, (b) market prices, (c) farm income and (d) Federal outlays on commodity programs no later than 30 days after the end of the grant period.

D. Use Grant Funds and other funds provided by Grantee only for the purposes and activities specified in the Proposal. Any uses not provided for in the approved budget must be approved in writing by RBS in advance of obligation by the Grantor.

E. Deliver the results of a study or activity to the Grantor upon completion of each task outlined in the Proposal.

F. Not use Grant Funds to replace any financial support previously provided or assured from any other source. The Grantee agrees, if applicable, that the Grantee's level of expenditure for the Value-Added Research shall be maintained and not reduced as a result of Grant Funds.

G. Conduct the Value-Added Research without discrimination as to race, color, religion, sex, national origin, age, sexual orientation, marital status, or physical disability.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute.

I. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor the Grant Funds with any legally permitted interest from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, at its option and without regard to prior waivers of previous defaults by Grantee, by judicial proceedings to require specific performance of the terms

of this Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made.

J. Provide a Financial Management System for the Value-Added Research that includes:

1. Accurate, current and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual or cash basis.

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

K. Retain financial records, supporting documents, statistical records and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Grantee's that are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

L. Provide either an audit report, annual financial statements or other documentation prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the approved Proposal, any applicable laws and regulations and this Agreement.

M. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes.

N. Not provide services that are duplicative of other program purposes, for which monies have been received, are committed, or are applied to from other sources (public or private).

O. Will meet the following performance goals for the Value-Added Research by the dates specified:

[To be determined by Grantor after consideration of the performance measures suggested by the Grantee in the Proposal. This may be combined with the deliverable schedule in item C.]

Grantor agrees that it:

A. Will make available to Grantee for the purpose of this Agreement funds not to exceed $300,000 that the Grantor will advance on a reimbursement basis in accordance with 7 CFR 3019.22. The funds will be reimbursed based on Grantee's submission of Form SF–270.

B. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of this Agreement:

This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the Value-Added Research will not produce beneficial results commensurate with the further expenditure of funds.

*In witness whereof,* Grantee has this day authorized and caused this Agreement to be executed

By: lllllllllllllllllll
Name of person
Title

And attested with its corporate seal affixed (if applicable)

By: lllllllllllllllllll
Name of Entity

Attest: lllllllllllllllll

United States of America Rural Business-Cooperative Service.

By: lllllllllllllllllll
Name of person
Title

[FR Doc. 03–12531 Filed 5–19–03; 8:45 am]

BILLING CODE 3410–XY–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Arizona Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 11:30 a.m. (PDT) on Thursday, May 22, 2003. The purpose of the meeting is to plan future projects.

This conference call is available to the public through the following call-in number: 1–800–923–4216, access code: 16639343. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435), by 4 p.m. on Wednesday, May 21, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–12646 Filed 5–15–03; 3:14 pm]

BILLING CODE 6335–01–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting on the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a conference call of the Hawaii Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 2:30 p.m on May 22, 2003. The purpose of this conference call is to identify pressing civil rights problems. In addition, committee members will hear presentations from civil rights experts and state officials on various civil rights topics affecting the state.

This conference call is available to the public through the following call-in number: 1–800–473–7796, access code: 16752963. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls for initiated using the supplied call-in number or made or wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 30, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–12645 Filed 5–15–03; 3:14 pm]

BILLING CODE 6335–01–M

## COMMISSION OF CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Massachusetts Advisory Committee will convene at 1 p.m. and adjourn at 2 p.m., on Tuesday, June 3, 2003. The purpose of the conference call is to hear subcommittee reports on possible topics for the committee's next civil rights project.

The conference call is available to the public through the following call-number: 1–800–556–3649, access code number: 16876767. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St. Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Monday, June 2, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated: at Washington, DC, May 7, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–12643 Filed 5–15–03; 3:13 pm]

BILLING CODE 6335–01–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Montana Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 1:15 p.m. (MDT) on Monday, May 19, 2003. The purpose of this conference call will be to brief on the follow-up activities to the Committee's report Equal Educational Opportunity for Native American students in Montana Public Schools. In addition, the committee hopes to hear from person who, among other things, will: discuss efforts to develop a statewide tribal education department that collaborates with the Office of Public Instruction, and report on services provided by the Public Defender's Office to indigent clients.

This conference call is available to the public through the following call-in number: 1–800–923–4216, access code: 16800432. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or made over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049), by 4:00 p.m. on Friday May 17, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 7, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–12642 Filed 5–15–03; 8:45 am]

BILLING CODE 6335–01–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a community forum will convene at 9:30 a.m. and adjourn at 5:30 p.m. on Wednesday, May 21, 2003, at the Greenberg Lounge, New York University Law School, 40 Washington Square South, New York, New York 10012. The purpose of the community forum is to discuss civil rights issues and Post-9/11 law enforcement-community relations in New York.

Persons desiring additional information, or planning a presentation to the Committee, should contact Aonghas St. Hilaire of the Eastern Regional Office at 202–376–7533 (TDD 202–376–8116. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 24, 2003.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 03–12644 Filed 5–15–03; 3:24 pm]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 23–2003]**

### Foreign-Trade Zone 22—Chicago, Illinois, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Illinois International Port District, grantee of Foreign-Trade Zone 22, requesting authority to expand its zone to include an additional site in the Chicago, Illinois, area, within the Chicago Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 12, 2003.

FTZ 22 was approved on October 29, 1975 (Board Order 108, 40 FR 51242, 11/4/75) and expanded on April 9, 1987 (Board Order 353, 52 FR 12217, 4/15/87); December 11, 1992 (Board Order 614, 57 FR 61044, 12/23/92); and, November 21, 2000 (Board Order 1127, 65 FR 76218, 12/6/00). The general-purpose zone project currently consists of the following sites: *Site 1* (19 acres)—within the Port's 2,250-acre Lake Calumet Harbor terminal facility; *Site 2* (578 acres)—industrial park at One Diversatech Drive, Manteno; *Site 3* (8 acres)—at 703 Foster Avenue, Bensonville; and, *Site 4* (8 acres)—at Gerry Drive and Hansen Court, Wood Dale.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (Proposed Site 5) in Elwood (Will

County). Proposed Site 5 (2,029 acres) is located at the CenterPoint Intermodal Center just west of the Village of Elwood, approximately 2½ miles east of Interstate 55 and approximately 1 mile south of Arsenal Road. The site was formerly the Joliet Arsenal, a U.S. Army ammunition plant, and is currently being developed for commercial use as an intermodal facility and industrial park. The majority of the site is owned by CenterPoint Properties Trust. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th Street NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW. Washington, DC 20230.

The closing period for their receipt is July 21, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 4, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 55 West Monroe Street, Suite 2440, Chicago, Illinois 60603.

Dated: May 12, 2003.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 03–12637 Filed 5–19–03; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-549–807]**

### Notice of Final Rescission of Antidumping Duty Administrative Review: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Rescission of Antidumping Duty Administrative Review.

**SUMMARY:** We are rescinding the administrative review of the antidumping duty order on certain carbon steel butt-weld pipe fittings from Thailand with respect to Thai Benkan Corporation, Ltd., (TBC) for the period of July 1, 2001, through June 30, 2002.

**EFFECTIVE DATE:** May 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor or Ronald Trentham, Antidumping/Countervailing Duty Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4114 or 482–6320, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 6, 1992, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on certain carbon steel butt-weld pipe fittings (pipe fittings) from Thailand (57 FR 29702). On July 1, 2002, the Department published a ''Notice of Opportunity to Request an Administrative Review'' on pipe fittings from Thailand (67 FR 44172). On July 31, 2002, the petitioner in this proceeding, Trinity Fitting Group, requested, in accordance with section 351.213(b) (2002) of the Department's regulations, an administrative review of the antidumping duty order on pipe fittings from Thailand covering the period July 1, 2001, through June 30, 2002, with respect to TBC. On August 15, 2002, TBC submitted a letter certifying that neither it nor its U.S. affiliate, Benkan America, Inc., sold, exported or shipped for entry and/or consumption in the United States subject merchandise during the period of review (POR). We published a notice of initiation of the review with respect to TBC on August 27, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). On March 24, 2003, the Department published the preliminary notice of intent to rescind this administrative review. *See Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand: Preliminary Notice of Intent to Rescind Administrative Review*, 68 FR 14192 (March 24, 2003). As discussed in the notice of preliminary results, this review covers TBC's shipments of the subject merchandise during the POR; however, based upon our shipment data query, we determined that TBC was a non-shipper for the purpose of this review. We invited interested parties to comment on our preliminary results. Interested parties did not submit case briefs or request a hearing.

#### Scope of the Review

The product covered by this order is certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.*, threaded, grooved, or bolted fittings). Carbon steel pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

#### Rescission of Administrative Review

We provided interested parties with an opportunity to comment on the preliminary results. As noted above, however, we received no comments. As discussed in the preliminary results, because TBC made no entries, exports or sales of the subject merchandise to the United States during the POR, we determine that it was a non-shipper. In accordance with 19 CFR 351.213(d)(3) and consistent with Department practice, we are rescinding our review of TBC (see, e.g., *Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999–2001 Administrative Review and Partial Rescission of Review*, 67 FR 68987 (November 14, 2002); see also, *Frozen Concentrated Orange Juice From Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913(June 14, 2002)).

This notice also serves as a reminder to parties subject to an administrative

protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return and/or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

This determination is issued and published pursuant to sections 751(a) and 777(i) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: May 13, 2003.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretaryfor Import Administration.*

[FR Doc. 03–12635 Filed 5–19–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-122–822]**

### Certain Corrosion-Resistant Carbon Steel Flat Products from Canada; Amended Final Results of Antidumping Duty Administrative Review in Accordance with North American Free Trade Agreement Binational Panel Decision

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** On September 13, 1999, the North American Free Trade Agreement (NAFTA) Panel affirmed the Department of Commerce's (the Department) second remand determination arising from the administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Canada. *See North American Free Trade Agreement Article 1904 Binational Panel Review*, USA-97–1904–3, September 13, 1999. As a result of this final and conclusive Binational Panel Review decision, we are amending the final results of review in this matter and will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to liquidate entries subject to these amended final results.

**EFFECTIVE DATE:** May 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley or Julio Fernandez, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3148 and (202) 482–0961, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 18, 1993, the Department issued antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. *See Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 58 FR 44162 (August 19, 1993). On April 15, 1997, the Department issued its final results of the second administrative review of certain corrosion-resistant carbon steel flat products for three exporters, Dofasco, Inc. (Dofasco), Continuous Colour Coat (CCC), and Stelco, Inc. (Stelco), and certain cut-to-length carbon steel plate for two exporters, Algoma Inc. and Stelco, covering the period of August 1, 1994 through July 31, 1995. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18448 (April 15, 1997) (*Final Results*).

At the request of Stelco, a NAFTA Binational Panel (the Panel) was established, and, on June 4, 1998, the Panel remanded the review of the final results on certain corrosion-resistant carbon steel flat products to the Department. The Panel remanded the review for the Department to reconsider, among other issues, its valuation of coating services performed by Stelco's affiliate, Baycoat Partnership (Baycoat). The Panel instructed the Department to reconsider Stelco's costs for coating services under § 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act), in conjunction with § 351.407(b)of the Department's regulations. At the same time, the Panel ruled that §§ 773(f)(2) and (f)(3) of the Act were inapplicable. *See NAFTA Binational Panel Decision of June 4, 1998* (*Panel Decision I*). The other two companies subject to the second administrative review of certain corrosion-resistant carbon steel flat products from Canada (Dofasco and CCC) were not involved in the *Second Remand Determination*.

On September 3, 1998, in accordance with the Panel's remand order, the Department issued its first remand determination in this matter. *See Final Remand Determination: NAFTA, Article 1904 Binational Panel Review, USA-97–1904–3* (September 3, 1998). Stelco challenged the Department's decision not to adjust the transfer price by its affiliate's return of profit. On January 29, 1999, the Panel remanded the review to the Department for the second time to reconsider the calculation of transfer price, and to take into account all evidence on the record. *See NAFTA Binational Panel Decision of January 20, 1999* (*Panel Decision II*). To ensure that the record contained all information necessary to make a final determination that would comply with the Panel's instructions, the Department reopened the record and verified the new information submitted by Stelco.

On June 14, 1999, in accordance with the Panel's remand order, the Department issued its second remand determination in this matter. *See Final Remand Determination: NAFTA, Article 1904 Binational Panel Review, USA-97–1904–3* (June 14, 1999) (*Second Remand Determination*). In this *Second Remand Determination*, the Department explained that there is a difference in Stelco's accounting records regarding Baycoat profits recorded and Baycoat profits remitted, as well as Baycoat profits on amounts charged to Stelco. Since profits remitted cannot be tied to any individual invoices, adjustments to transfer price cannot be made by profits remitted on individual sales. Baycoat profits, as recorded in Stelco's financial statements, may include profits on job orders performed for Baycoat's other owner, as well as other parties. Therefore, the Department made adjustments to the transfer price based on an allocated amount of the profits earned by Baycoat on Stelco job orders. The Department reallocated total per unit profit (Stelco's per-unit profit, as derived by Stelco, multiplied by two), by multiplying it by the ratio of the value charged to Stelco by Baycoat (as it appears in Baycoat's records) to the total value produced by Baycoat. We allocated interest and general and administrative expenses (G&A) by class by multiplying the interest and G&A per net ton times two, and then multiplying the product by the ratio of total value of Baycoat sales to Stelco to Baycoat's total sales value. We subtracted allocated interest and G&A expenses from the cost per net ton, since Baycoat's interest and G&A are already included and accounted for in Stelco's overall interest and G&A expense calculation. On September 13, 1999, the Panel upheld the Department's Second Remand Determination.

The Department faced a similar issue in the subsequent administrative review of certain corrosion-resistant carbon steel flat products from Canada, covering the period August 1, 1995 through July 31, 1996, which was also remanded to the Department by the

Panel for issues similar to those in the *Second Remand Determination. See Certain Corrosion-Resistant Carbon Steel Flat Products From Canada; Notice of Amended Final Results of Administrative Review in Accordance With North American Free Trade Agreement Panel Decision*, 66 FR 52095 (October 12, 2001).

Therefore, as there is a final and conclusive Binational Panel Review decision in this action, we are amending our final results of review for the period August 1, 1994 through July 31, 1995. The revised weighted average margins are as follows:

| Manufacturer/exporter | Weighted-average margin percent |
|---|---|
| Stelco | 0.55 |

The Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the BCBP.

This notice is published in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), and 19 CFR 353.22.

Dated: May 14, 2003.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03–12638 Filed 5–19–03; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A-570–878]**

## Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley (Suzhou Fine Chemicals Group Co., Ltd.) at (202) 482–3148, Javier Barrientos or Jessica Burdick (Shanghai Fortune Chemical Co., Ltd.) at (202) 482–2243 or (202) 482–0666, or Sally C. Gannon at (202) 482–0162; Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

We determine that saccharin from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

### Background

The preliminary determination in this investigation was published on December 27, 2002. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79049 (December 27, 2002) (*Preliminary Determination*). Since the issuance of the preliminary determination, the following events have occurred.

On January 8, 2003, petitioner, PMC Specialities Group Inc., requested a hearing. On January 8, 2003, the Department received a timely factor value submission from Shanghai Fortune Chemical Co. (Shanghai Fortune) and Suzhou Fine Chemicals Group Co., Ltd. (Suzhou) (collectively, ''respondents'') and Kaifeng Xinghua Fine Chemical Factory (Kaifeng). On February 11, 2003, the Department extended the due date for the final determination of this investigation (68 FR 6885). On February 21, 2003, the Department received timely factor value submissions from petitioner, respondents and Kaifeng, and Procter & Gamble Co. On March 3, 2003, the Department received a supplemental factor value submission from petitioner. On April 10, 2003, the Department received timely written case briefs from petitioner, respondents, Procter & Gamble Co., and Colgate Palmolive Co. On April 15, 2003, the Department received timely rebuttal comments from petitioner and respondents. On April 22, 2003, a public hearing was held in this proceeding. We have now completed this investigation in accordance with section 735 of the Act.

### Scope of the Investigation

The product covered by this investigation is saccharin. Saccharin is defined as a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) sodium saccharin (American Chemical Society Chemical Abstract Service (CAS) Registry ι128–44–9); (2) calcium saccharin (CAS Registry ι6485–34–3); (3) acid (or insoluble) saccharin (CAS Registry ι81–07–2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray-dried powder, and liquid forms.

The merchandise subject to this investigation is classifiable under subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS) and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and Customs (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) purposes, the Department's written description of the scope of this investigation remains dispositive.

### Period of Investigation

The period of investigation (POI) is January 1, 2002 through June 30, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (*i.e.*, July 2002), and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Saccharin from the People's Republic of China*, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, dated May 12, 2003 (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are addressed in the *Decision Memorandum*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

### Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (NME) country in all past antidumping

investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China*, 67 FR 71137 (November 29, 2002); *Notice of Final Determination of Sales at Less Than Fair Value: Cold-Rolled Carbon Steel Flat Products from the People's Republic of China*, 67 FR 62107 (October 3, 2002). A designation as an NME remains in effect until it is revoked by the Department (*see* section 771(18)(C) of the Act). The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, *see* the *Preliminary Determination*.

**Separate Rates**

In the *Preliminary Determination*, the Department found that respondents and Kaifeng met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separates rates determination with respect to respondents and Kaifeng. For a complete discussion of the Department's determination that the respondents and Kaifeng are eligible for a separate rate, *see* the *Preliminary Determination*.

**The PRC-Wide Rate**

In the *Preliminary Determination*, we found that the use of adverse facts available for the PRC-wide rate was appropriate for other exporters in the PRC based on our presumption that those companies who failed to demonstrate that they met the requirements for a separate rate constitute a single enterprise under common control by the Chinese government. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from the respondents and Kaifeng.

When analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioner relied in calculating the estimated dumping margin and determined that the margin in the petition was appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margin for purposes of using it as adverse facts available, we examined the price and cost information provided in the petition in the context of our preliminary determination. For further details, *see Preliminary Determination of Saccharin from the People's Republic of China: Analysis and Corroboration of Adverse Facts Available Rate*, Memorandum from Mark Hoadley, through Sally Gannon, to the File (December 18, 2002). We received no comments concerning the Department's calculation of the PRC-wide rate; therefore, the Department finds that, for the final determination, the rate contained in the petition, recalculated as described below, has probative value.

Since the *Preliminary Determination*, we have revised several of the surrogate values based on Indian import data. In order to take into account these values, we have recalculated the petition margin using, where possible, the revised surrogate values. As a result of this recalculation, the PRC-wide rate, for the final determination, is 329.33 percent. These revised surrogate values are based on updated versions of the same source documentation used in the preliminary determination. Therefore, additional corroboration analysis is not necessary. See *Final Determination of Saccharin from the People's Republic of China: Analysis of Adverse Facts Available Rate*, Memorandum from Mark Hoadley to the File (May 12, 2003).

**Margins for Cooperative Exporters Not Selected**

The exporter who responded to Section A of the Department's antidumping questionnaire but was not selected as a respondent in this investigation, Kaifeng, has applied for a separate rate and provided information for the Department to make this determination. Although it is not practicable for the Department to calculate a separate rate for Kaifeng in addition to Suzhou and Shanghai Fortune (*see Respondent Selection Memorandum*, explaining the Department's decision to limit the investigation to two exporters), the company did cooperate in providing all information that the Department requested. We received no comments concerning the preliminary margin applied to Kaifeng; therefore, for the final determination, we have continued to apply to Kaifeng a separate rate based on the weighted-average of the rates calculated for those exporters that were selected to participate in this investigation, excluding any rates that are zero, de minimis, or based entirely on adverse facts available. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey from the People's Republic of China*, 66 FR 50608, 50609 (October 4, 2001).

**Surrogate Country**

For purposes of the final determination, we continue to find that India remains the appropriate surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, *see* the *Preliminary Determination*.

**Verification**

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

**Date of Sale**

In the *Preliminary Determination*, the Department determined that invoice date was the most appropriate date of sale for respondents. Normally, the Department presumes that invoice date is the date of sale; however, ''[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale.'' *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997) (*Preamble*). *See also* 19 CFR 351.401(i). After examining Shanghai Fortune's sales documentation at verification, we determine that because there were no material changes to the essential terms of sale (quantity and price) between the purchase order date and the invoice date, purchase order date is the most appropriate date of sale for Shanghai Fortune. *See Decision Memorandum* and *Memorandum to the File from Javier Barrientos and Jessica Burdick, Case Analysts, through Sally Gannon, Program Manager; Antidumping Duty Investigation of Saccharin from the People's Republic of China (PRC) (A-570–878): PRC Sales Verification Report for Shanghai Fortune Chemical Co.,* at 5–6 (March 26, 2003) (*Shanghai Fortune Verification Report*).

After examining Suzhou's sales documentation at verification, we determine that, for the final determination, invoice date continues to be the most appropriate date of sale for Suzhou. Suzhou reported purchase order dates and invoice dates as dates of sale. For those sales for which it reported invoice date, it did so because material sales terms were not set until this date. Given that the Department must choose one date of sale for all sales

in a particular market by a single respondent, we, therefore, are choosing invoice date as the date of sale for Suzhou. This choice is consistent with our regulatory presumption in favor of invoice date, and with the fact that material sales terms sometimes are not set until invoice date for this particular exporter.

**Fair Value Comparisons**

To determine whether sales of saccharin to the United States by Suzhou and Shanghai Fortune were made at LTFV, we compared the export price (EP), for Shanghai Fortune, and the constructed export price (CEP), for Suzhou, to normal value (NV), as discussed in the *Decision Memorandum, Final Determination in the Antidumping Duty Investigation of Saccharin from the People's Republic of China: Analysis of Suzhou Fine Chemicals Group Co., Ltd.,* from Mark Hoadley, through Sally Gannon, to the File (May 12, 2003) (*Suzhou Analysis Memorandum*), *Final Determination in the Antidumping Duty Investigation of Saccharin from the People's Republic of China: Analysis of Shanghai Fortune Chemical Co., Ltd.,* from Javier Barrientos, through Sally Gannon, to the File (May 12, 2003) (*Shanghai Fortune Analysis Memorandum), and Antidumping Duty Investigation of Saccharin from the People's Republic of China: Factor Valuation*, Memorandum from Sebastian Wright, Case Analyst, through Mark Hoadley, Senior Analyst, Office VII, to the File (May 12, 2003) (*Factor Valuation Memorandum*). In accordance with section 777A(d)(1)(A)(i) of the Act, for Shanghai Fortune, we calculated a weighted-average margin based on EP. *See also* ''Use of Facts Otherwise Available'' section of this notice. With regard to Suzhou, in accordance with section 777A(d)(1)(A)(ii) of the Act, we calculated a weighted-average margin based on CEP.

**Use of Facts Otherwise Available**

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

As discussed above, section 776(a)(2)(A) of the Act requires the Department to use facts available when a party withholds information which has been required by the Department. On September 10, 2002 and again on November 4, 2002, the Department requested that Shanghai Fortune report all sales of saccharin to the United States during the POI. The Department requested that Shanghai Fortune provide this sales information, whether the date of sale was based on purchase order/contract date or invoice date. On October 25, 2002 and November 25, 2002, Shanghai Fortune submitted to the Department what it reported to be all sales of saccharin sold to the United States during the POI, based upon both purchase order/contract date, as well as invoice date. After the preliminary determination, but prior to verification, Shanghai Fortune had additional opportunities to provide the Department with all sales information. At Shanghai Fortune's verification, the Department discovered an unreported sale of saccharin to the United States during the POI. Therefore, application of facts available is appropriate pursuant to 776(a)(2)(A), because Shanghai Fortune withheld information the Department requested, namely, one of its sales.

Once the Department determines that the use of facts available is warranted, section 776(b) of the Act further permits the Department to apply an adverse inference if it makes the additional finding that ''an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.'' The Department finds that Shanghai Fortune's failure to report this sale constitutes a failure to cooperate to the best of its ability and that the use of adverse facts available is appropriate under section 776(b) for the following reasons. The Department requested on two occasions that Shanghai Fortune report all of its sales during the POI (first, on the basis of what Shanghai Fortune believed to be the date of sale, and, second, on the basis of both purchase order/contract date and invoice date). In filing its second supplemental, Shanghai Fortune certified that it had reported all sales on both a purchase order/contract date basis and an invoice date basis. Shanghai Fortune explained at verification that it inadvertently failed to report this sale. *See Shanghai Fortune Verification Report* at 10 and 16. For this reason, and because it failed to report only this one sale, the Department finds that the application of partial, rather than total, adverse facts available for the missing POI sale is appropriate in this case. Section 776(b) of the Act states that adverse facts available may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As adverse facts available, and in accordance with section 776(b), the Department is applying the highest rate from the petition for an export price sale to the quantity of Shanghai Fortune's missing sale for the final determination. *See Shanghai Fortune Analysis Memorandum*. As discussed in ''The PRC-Wide Rate'' section of this notice, the Department has adjusted the petition rate, and the petition rate has been corroborated. Moreover, we determine that the highest rate from the petition is relevant to Shanghai Fortune, given that it represents a sale of a product also sold by Shanghai Fortune, made on the same sales basis (export price) as Shanghai Fortune.

**Changes Since the Preliminary Determination**

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies used in the preliminary determination. In particular, we have made changes involving the following issues: surrogate valuation, concentration strength of inputs, byproduct offset, normal value financial ratios, Suzhou USA's indirect selling expenses, and date of sale, as well as several miscellaneous calculation issues. These changes are discussed in detail in the *Decision Memorandum*, *Suzhou Analysis Memorandum*, and *Shanghai Fortune Analysis Memorandum*. In addition to the *Decision Memorandum*, public versions of the *Suzhou Analysis Memorandum* and *Shanghai Fortune Analysis Memorandum* are on file in the Central Records Unit, Room B-099, of the main Commerce Building.

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue to suspend liquidation of all entries of

saccharin from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after December 27, 2003 (the date of publication of the *Preliminary Determination* in the **Federal Register**). BCBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. The suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Suzhou Fine Chemical Group Co., Ltd. | 291.57% |
| Shanghai Fortune Chemical Co., Ltd. | 249.39% |
| Kaifeng Xinhua Fine Chemical Factory | 281.97% |
| PRC-Wide | 329.33% |

**International Trade Commission Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether these imports are materially injuring, or threatening material injury to, an industry in the United States. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing BCBP officials to assess antidumping duties on all imports on the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

**Notification Regarding APO**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: May 12, 2003.

**Jeffrey May,**

*Acting Assistant Secretary for Import Administration.*

**Appendix**

**Issues in Decision Memorandum**

*Comment 1:* Surrogate Values: Most Appropriate Source for Surrogate Values
*Comment 2:* Surrogate Values: Adjustments to Surrogate Values for Concentration Strengths
*Comment 3:* Surrogate Values: Choice of Surrogate Values for Byproducts
*Comment 4:* Application of ''Sigma'' Rule
*Comment 5:* Market Economy Inputs: Valuation of Phthalic Anhydride
*Comment 6:* Byproduct Offset
*Comment 7:* Packing Expenses
*Comment 8:* Suzhou's Self-Produced Inputs
*Comment 9:* Normal Value Financial Ratios
*Comment 10:* Suzhou USA's Indirect Selling Expenses
*Comment 11:* Calculation of Suzhou USA's CEP Profit
*Comment 12:* Date of Sale
*Comment 13:* Calculation Issue: Freight
*Comment 14:* Calculation Issue: Conversion Error/Ice, Water, and Steam
*Comment 15:* Calculation Issue: Conversion Error/Labor
*Comment 16:* Calculation Issue: Discrepancy Between Prelim Factor Values Memo and Calculations

[FR Doc. 03–12636 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of application to amend an Export Trade Certificate of Review.

**SUMMARY:** The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov.*

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 87–7A001.''

The American Film Marketing Association's (''AFMA'') original Certificate was issued on April 10, 1987 (52 FR 12578, April 17, 1987) and last amended on December 9, 1998 (64 FR 10993, March 8, 1999). A summary of the application for an amendment follows.

**Summary of the Application:**

*Applicant:* American Film Marketing Association (''AFMA''), 10850 Wilshire Blvd., 9th Floor, Los Angeles, California 90024–4321.

*Contact:* Thomas E. Arend, Jr., Attorney, Telephone: (202) 663–8070.

*Application No.:* 87–7A001.

*Date Deemed Submitted:* May 8, 2003.

*Proposed Amendment:* AFMA seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l): Adriana Chiesa Enterprises SRL, Rome, Italy; Alain Siritzky Productions (ASP), Paris, France; Alliance Atlantis Communications Corporation, Toronto, Canada; Arclight Films PTY. LtD., Sydney, Australia; Atlas International Film GMBH, Munich, Germany; Atrium Productions KFT, Rotterdam, The Netherlands; Beyond Films, Ltd., Surry Hills, Australia; British Film Institute, London, United Kingdom; Buena Vista Television, a Division of Disney/ABC Int'l TV Inc., Burbank, California; BV International Pictures AS, Avaldsnes, Norway; Capitol Films Limited, London, United Kingdom; China Star Entertainment Group, TST, Kowloon, Hong Kong; Cinemavault Releasing, Toronto, Canada; CORI Distribution Group, London, United Kingdom; Distant Horizon, Ltd., Surrey, United Kingdom; DZ Bank, London, United Kingdom; FIDEC, Montreal, Canada; Film Finance Corporation Australia, Sydney, Australia; Filmax-SOGEDASA, Barcelona, Spain; Filmexport Group SRL, Rome, Italy; Filmfour International, London, United Kingdom; Fintage House, Leiden, The Netherlands; Fleetboston Financial, Boston, Massachusetts; Focus Features, New York, New York; Fortissimo Film Sales, Amsterdam, The Netherlands; Freeway Entertainment Group Ltd., Budapest, Hungary; Fremantlemedia Enterprises, London, United Kingdom; Goldcrest Films International, Ltd., London, United Kingdom; Golden Harvest Entertainment Co., Ltd., Beverly Hills, California; Good Times Entertainment, Inc., Bel Air, California; Han Entertainment, Hong Kong; Hanway Films, London, United Kingdom; Hollywood Previews Entertainment, Inc., Santa Monica, California; Horizon Entertainment, Inc., Vancouver, Canada; IAC Film & Television, London, United Kingdom; Icon Entertainment International, London, United Kingdom; IFD Films & Arts, Ltd., Tsing Yi, New Territories, Hong Kong; IFM World Releasing, Inc., Glendale, California; In-Motion Pictures, Inc., London, United Kingdom; Intermedia, London, United Kingdom; Intra Movies SRL, Rome, Italy; JP Morgan Securities, Inc. Entertainment Industries Group, Los Angeles, California; Kevin Williams Associates, S.A., Madrid, Spain; Lolafilms, Madrid, Spain; Media Asia Distribution, Ltd., Causeway Bay, Hong Kong; Moviehouse Entertainment, London, United Kingdom; New Zealand Film Commission, Wellington, New Zealand; North American Releasing, Inc., Vancouver, Canada; North by Northwest Distribution, Spokane, Washington; Oasis International, Toronto, Canada; Pathe International, Paris, France; Powerhouse Entertainment Group, Inc., Beverly Hills, California; Pueblo Film Group, Zurich, Switzerland; Renaissance Films, Ltd., London, United Kingdom; Safir Films, LTD., Harrow, Middlesex, United Kingdom; SOGEPAQ S.A., Madrid, Spain; Solo Entertainment Group, Inc., Beverly Hills, California; Splendid Pictures, Inc., Bel Air, California; Stadsparkasse Koeln, Entertainment Finance, Cologne, Germany; Studiocanal, Boulogne, France; Svensk Filmindustri, AB, Stockholm, Sweden; Telepool, Munich, Germany; TF 1 International, Boulogne Billancourt Cedex, France; Trust Film Sales, Hvidovre, Denmark; TVA Films, a Division of Group TVA, Inc., Montreal, Canada; UGC International, Neuilly sur Seine, France; Vine International Pictures, Ltd., Downe, Orpington, United Kingdom; and The Works, London, United Kingdom; and

2. Delete each of the following companies as a ''Member'' of the Certificate: Arama Entertainment, Encino, California; Associated Television International, Los Angeles, California; Atmosphere Entertainment, Inc., Westlake Village, California; Blue Rider Pictures, Manhattan Beach, California; Capella Films, Los Angeles, California; Film Four International, Burbank, California; Helkon International Pictures, Inc., Beverly Hills, California; IFM Film Associates, Inc., Glendale, California; Largo Entertainment, Beverly Hills, California, NBC Enterprises, Burbank, California; Odyssey Pictures Corporation, Dallas, Texas; Saban Pictures International, Los Angeles, California; The Kushner-Locke Company, Beverly Hills, California; Village Roadshow Pictures, Burbank, California; CAL Fed Bank, Sherman Oaks, California; Chase Manhattan, Los Angeles, California; Cinema Completions International, Studio City, California; Far East National Bank, Los Angeles, California; Mizuho Corporate Bank, Ltd., Los Angeles, California; Motion Picture Bond Company, Los Angeles, California; Aura Entertainments LLC, Beverly Hills, California; Imageworks Entertainment International, Inc., Woodland Hills, California; Switch Entertainment, Norfolk, Virginia; Vortex Pictures, LLC, Santa Monica, California, and York Entertainment, Encino, California.

Dated: May 14, 2003.

**Jeffrey C. Anspacher,**

*Director, Office of Export Trading, Company Affairs.*

[FR Doc. 03–12632 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–DR–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Availability of Seats for the Thunder Bay National Marine Sanctuary and Underwater Preserve Advisory Council

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice and request for applications.

**SUMMARY:** The Thunder Bay National Marine Sanctuary and Underwater Preserve (TBNMS&UP) is seeking applications for the following seats on the Advisory Council: Tourism, Diving, Education K–12, Maritime History and Interpretation, Citizen-At-Large.

Applicants are chosen based upon their particular expertise and experiences in relation to the seat for which they are applying; community and professional affiliations; and the length of residence in the area affected by the Sanctuary & Preserve. Applicants who are chosen as members should expect to serve two-year terms pursuant to the Council's Charter. Applicants should be available to attend approximately six meetings annually.

**DATES:** Applications are due by June 6, 2003.

**ADDRESSES:** Application kits may be obtained from Kate Thompson, NOAA/Thunder Bay National Marine Sanctuary and Underwater Preserve, 145 Water Street, Alpena, Michigan 49707. Applications are also available on-line at: *www.thunderbay.noaa.gov.* All completed applications should be sent to the Alpena address.

**FOR FURTHER INFORMATION CONTACT:** Jeff Gray, NOAA/Thunder Bay National Marine Sanctuary and Underwater Preserve, 145 Water Street Alpena, MI 49707, (989) 356–8805 ext. 12 PHONE, (989) 354–0144 FAX, *jeff.gray@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The current TBNMS&UP Advisory Council was established in 2001 to provide advice and recommendations to the

Sanctuary Manager and the Joint Management Committee (a state/federal body to oversee major policy, management and budget issues concerning the Sanctuary & Preserve) regarding the management and operation of the Thunder Bay NMS & UP. Since its establishment, the Council has played a vital role in the decisions affecting the Sanctuary & Preserve waters.

The Council's 15 voting members represent a variety of local constituent groups, as well as the general public, plus five local governmental jurisdictions.

The Council is supported by four working groups: Education, Outreach, Volunteer and Mooring Buoy Working Groups. Each group deals with matters concerning education, outreach, volunteers and resource protection.

The Council functions in an advisory capacity to the Sanctuary Manager and is instrumental in helping to develop program goals. The Council works to advise the Sanctuary Manager by keeping him informed about areas of concern from their constituents, as well as offering recommendations on specific issues that may occur.

The Sanctuary & Preserve was established to manage and protect Thunder Bay's historic collection of over 100 shipwrecks. NOAA and the State of Michigan are equal partners in the manager of TBNMS&UP. Both NOAA and the State will mutually agree on the selection of the vacant seat members.

**Authority:** 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: May 14, 2003.

**Jamison S. Hawkins,**

*Acting Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 03–12629 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–NK–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

## ENVIRONMENTAL PROTECTION AGENCY

### Coastal Nonpoint Pollution Control Program: Approval Decision on Maine Coastal Nonpoint Pollution Control Program

**AGENCY:** National Oceanic and Atmospheric Administration, U.S. Department of Commerce and the U.S. Environmental Protection Agency.

**ACTION:** Notice of Intent to Approve the Maine Coastal Nonpoint Program.

**SUMMARY:** Notice is hereby given of the intent to fully approve the Maine Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the Maine coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the Maine coastal nonpoint program on February 23, 1998. NOAA and EPA have drafted approval decisions describing how Maine has satisfied the conditions placed on its program and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for the Maine coastal nonpoint program available for a 30-day public comment period. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on the NOAA Web site at *http://www.ocrm.nos.noaa.gov/czm/* or may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

**DATES:** Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by June 19, 2003.

**ADDRESSES:** Comments should be made to: John King, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x188, e-mail *john.king@noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov.*

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: May 15, 2003.

**Jamison S. Hawkins,**

*Acting Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

**G. Tracy Mehan, III**

*Assistant Administrator Office of Water, Environmental Protection Agency.*

[FR Doc. 03–12527 Filed 5–17–03; 8:45 am]

BILLING CODE 3510–08–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 032103C]**

### Endangered Species; File No. 1418

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

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Lawrence D. Wood, Marine Life Center of Juno Beach, 14200 U.S. Hwy. 1, Juno Beach, FL 33408, has applied in due form for a permit to take hawksbill sea turtles (*Eretmochelys imbricata*) for purposes of scientific research.

**DATES:** Written or telefaxed comments must be received on or before June 19, 2003.

**ADDRESSES:** The application 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, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

**FOR FURTHER INFORMATION CONTACT:** Patrick Opay (301)713–1401 or Carrie Hubard, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested 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).

The applicant proposes to study the abundance and distribution of hawksbill

sea turtles in the waters of Palm Beach County, FL. The purpose of this project is to support hawksbill recovery efforts by surveying the local population to document the distribution and movement of individuals in these waters. Larger turtles will be hand captured and smaller individuals will be captured using a 24 inch (60 cm) diameter dip-net. Turtles will be retained on a vessel for the collection of morphometric data, tagging, numbering, photographs, and tissue sampling, and then released. Seventy-five turtles of all sizes will be captured annually, and the requested duration of this permit is 5 years.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: May 14, 2003.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–12650 Filed 5–19–03; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 051203B]**

### Marine Mammals; File No. 1004–1656

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

**ACTION:** Issuance of permit amendment.

**SUMMARY:** Notice is hereby given that Funtime, Inc. d/b/a Six Flags Worlds of Adventure, 1060 North Aurora Road, Aurora, OH 44202, has been issued an amendment to public display Permit No. 1004–1656–00 to extend the expiration date through May 16, 2004.

**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

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore or Amy Sloan, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On May 22, 2002, notice was published in the **Federal Register** (67 FR 35965) that Permit No. 1004–1656–00 had been issued to Funtime, Inc. d/b/a Six Flags Worlds of Adventure to import two killer whales, one adult female from Marineland S.A., Antibes, France and one adult male from Mundo Marino, Buenos Aires, Argentina, for the purposes of public display. This permit amendment extends the duration of the permit from May 16, 2003, to May 16, 2004. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: May 13, 2003.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 03–12649 Filed 5–19–03; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No.: 2003–P–018]**

### Request for Comments on the Study of the Changes Needed To Implement a Unity of Invention Standard in the United States

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) has established a 21st Century Strategic Plan to transform the USPTO into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. As part of this plan, the USPTO will conduct a study of the changes needed to implement a Patent Cooperation Treaty (PCT) style Unity of Invention standard in the United States. Prior to starting a detailed study, the USPTO is seeking public comment on a number of issues to help guide the scope and content of a study on the adoption of a Unity of Invention standard in the United States.

**COMMENT DEADLINE DATE:** To be ensured of consideration, written comments must be received on or before July 21, 2003. No public hearing will be held at this stage of the study.

**ADDRESSES:** Comments should be sent by electronic mail message over the Internet addressed to: *unity.comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313–1450; or by facsimile to (703) 872–9411, marked to the attention of Robert Clarke. Although comments may be submitted by mail or facsimile, the USPTO prefers to receive comments via the Internet. If comments are submitted by mail, the USPTO would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, located at Room 3D65 of Crystal Plaza 3/4, 2201 South Clark Place, Arlington, Virginia, 22202, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: *http://www.uspto.gov*). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Clarke directly by phone at (703) 305–9177, by e-mail at *robert.clarke@uspto.gov*, by facsimile to (703) 305–1013, marked to the attention of Robert A. Clarke, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313–1450.

**SUPPLEMENTARY INFORMATION:** The Unity of Invention standard (in PCT applications) and United States restriction practice (in United States applications) are mechanisms by which the USPTO determines whether patent applicants are entitled to examination of all of the claims in an application by determining whether the claims are directed to a single invention, or to

multiple inventions that are capable of supporting separate patents.

The Unity of Invention standard is a component of many foreign patent laws and is also used in international search and preliminary examination proceedings conducted pursuant to the PCT.

United States restriction practice is based on 35 U.S.C. 121, which provides that: ''[i]f two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions.'' This allows examiners to limit applicants to one set of patentably indistinct inventions per application. The USPTO may ''restrict'' the application to one set of patentably indistinct inventions: (1) If the application includes multiple independent and patentably distinct sets of inventions, and (2) if there is an undue burden to examine more than one invention in the same application. Restriction practice was designed to balance the interest of granting an applicant reasonable breadth of protection in a single patent against the burden on the USPTO of examining multiple inventions in a single application.

Current USPTO policy allows for restriction between related inventions as well as between independent inventions. However, if the USPTO adopts a Unity of Invention standard, restriction would, as a general rule, no longer be permitted between certain related inventions that currently may be restricted under United States restriction practice. Some examples of related inventions that are often filed together and typically can be restricted under current United States practice before a prior art search is conducted, but do not lack unity under the Unity of Invention standard, include: (1) A process, and the apparatus for carrying out the process; (2) a process for making a product, and the product made; (3) an apparatus, and the product made by the apparatus; (4) a product, and the process of using the product.

A lack of Unity of Invention is different from restriction practice in some major aspects. Unity of Invention is practiced, with slight variations, in PCT applications and in applications examined by the European Patent Office (EPO) and the Japan Patent Office (JPO). The primary consideration for establishing Unity of Invention is that the claims are entitled to be examined in a single application if the claims are so linked together as to form a single general inventive concept, premised on the concept of a common feature (referred to as a ''special technical feature'' in the context of PCT Rule 13) that can be present in multiple inventions within a single application. As long as the same or corresponding common feature is found in each claim and that common feature makes a contribution over the prior art, the claims comply with the requirement for Unity of Invention. If the inventions lack a common feature that makes a contribution over the prior art, then a holding of lack of Unity of Invention would be proper. The determination of whether an invention makes a contribution over the prior art can effectively be done only after a prior art search for the common feature has been performed.

Adoption of any of the various styles of Unity of Invention practice will likely have significant impacts on current USPTO examination practices and organization. The degree of the impacts will depend upon the particulars of how the Unity of Invention standard is implemented. A complete study will need to consider, at a minimum, the impacts and changes to: quality, pendency, workload, revenue, fees, patent term adjustment, examination resources, organizational structure of the Patent Examining Corps, and the United States patent classification system.

**Issues for Comment**

*Issue 1:* Unity of Invention as practiced in the EPO is interlinked to EPC-style claim drafting and EPO claim treatment practice, including certain limitations on claiming that are not present in current United States patent practice. For example, the EPO (under EPC rule 29(2)) usually allows only one independent claim per category of invention (category of invention is that of product, process or apparatus of use), and emphasizes the search and examination of independent claims. In contrast, the USPTO searches and examines every claim, independent and dependent, and every limitation of every claim. In addition, EPC-style claim drafting is generally termed ''central claiming''. In central claiming, the inventive concept is essentially claimed in the independent claim. If the independent claim is found allowable, the EPO examination will not be unduly concerned with respect to the dependent claims, according to EPO Guidelines, C–III, 3.6.

Should the USPTO study ways to adopt EPO claim treatment practice, including normally allowing only one independent claim per category of invention, when considering ways to adopt a Unity of Invention standard, and why?

Should the USPTO emphasize the examination of independent claims and modifying the examination of dependent claims in the same fashion as the EPO?

If so, would there be any reason to consider changes to the presumption of validity under 35 U.S.C. 282 of those dependent claims?

*Issue 2:* In United States restriction practice, the applicant can file a subsequent application that is directed to an invention that was divided out of the parent application. These are called Divisional applications. Divisional applications are typically subsequently filed and are not normally examined concurrently with the parent application. Divisional applications retain the benefit of the filing date of the original application if the conditions set forth in 35 U.S.C. 120 are met. This allows an applicant to continue to pursue protection for the inventions subject to restriction that were in the original application without being affected by double patenting. All member states of the Paris Convention for the Protection of Industrial Property (1967) (including Japan and all EPC member states), as well as the EPO, also provide for the filing of Divisional applications. However, the PCT does not yet provide for the filing of Divisional international applications. Consequently, the PCT rules provide for applicant to pay for the search and examination of additional inventions that ''lack unity'' in a single international application. Adoption of a Unity of Invention standard could, in some instances, require examining more inventions during the examination of a single application than occurs presently, thereby possibly causing delay in the examination of other applications if examination resources are limited. This could increase the USPTO's average patent pendency time.

If the USPTO adopts a Unity of Invention standard, should the USPTO provide applicants the option of a PCT-style Unity of Invention practice to pay for additional inventions that lack Unity of Invention in the same application?

If so, should the USPTO consider any changes to patent term adjustment under 35 U.S.C. 154(b) for applications which have more inventions examined in a single application under a Unity of Invention standard than are permitted under current practice?

In view of the fact that examining multiple inventions in a single application could cause examination delay in other applications, what other revisions to patent term adjustment provisions under 35 U.S.C. 154(b) should be considered by the USPTO, or

should the USPTO also consider revising the order that cases are taken up for examination?

*Issue 3:* Under the PCT, examination proceeds on the basis of the first claimed invention if applicant does not pay for additional inventions that lack unity.

Should the USPTO adopt, for national applications, the practice currently used under the PCT of examining the first claimed invention where there is a holding of lack of Unity of Invention?

Optionally, where Unity of Invention is lacking: (1) Should the USPTO examine the first claimed product, or the first claimed invention if there are no product claims; or (2) should applicant be given the opportunity to elect an invention to be examined?

*Issue 4:* A determination of lack of Unity of Invention is predicated on assessing whether a common feature (referred to as a ''special technical feature'' in the context of PCT Rule 13) defines a contribution over the prior art. Certain PCT member states assess this requirement only with respect to patentable advances over prior art. However, issues of lack of support, enablement, clarity, or conciseness, generally resulting from excessive breadth of claims or excessive numbers of claims, may occur that render examination unduly burdensome. In such circumstances, some International Authorities will make a ''partial search'' declaration to limit the extent of search and examination. The USPTO does not follow this practice. On the other hand, it may be viewed that if the common feature or ''special technical feature'' is not adequately supported by the disclosure or lacks utility (''industrial applicability'' in the PCT context), the special technical feature does not make a contribution over the prior art.

When adopting the Unity of Invention standard, should the USPTO follow the practice of performing only a ''partial search'' if the examination of the entire scope of the claims is unduly burdensome due to non-prior art issues?

Alternatively, should the USPTO assess adequacy of the disclosure and industrial applicability in addition to the prior art when determining whether the claims' common feature makes a contribution over the prior art?

*Issue 5:* The USPTO's 21st Century Strategic Plan is predicated on a certain level of revenue to provide the resources needed to meet quality and timeliness goals. The Plan currently does not account for any additional resource requirements, and any corresponding revenue shortfalls, that may result from adopting a Unity of Invention standard. Statutory fees under 35 U.S.C. 41(a) and (b), in the aggregate, are set to cover USPTO operating costs. If the average cost of processing patent applications goes up, the USPTO will need to increase fees. Assuming that there will be extra costs of examination under Unity of Invention, possible increases would be: (1) All filing fees; (2) all filing fees and an additional fee for examination of claims that lack Unity of Invention with an elected invention; (3) increased issue and/or maintenance fees of all applications; (4) increased issue and/or maintenance fees for applications paying the additional invention fee; or (5) a combination of two or more of (1) through (4) above.

Which of the above approaches should the USPTO propose in regard to any fee increases?

*Issue 6:* Adopting a Unity of Invention standard would impact the number of inventions that would be examined in a single application, and require examining multiple inventions that cross multiple disciplines in a single application. Due to the current level of technical specialization in the Patent Examination Corps, the USPTO will have to consider the impact any change would have on the ability of the USPTO to maintain high quality examination.

How should work be assigned to ensure that examination quality would not suffer if examiners have to examine multiple inventions from different disciplines in a single application?

Should the USPTO consider: (1) Using team examination, similar to the EPO where applications are examined using three-person teams called ''examination divisions'' (2) extending the use of patentability report procedures provided for in section 705 of the Manual of Patent Examining Procedure (8th ed. 2001) (Rev. 1, Feb. 2003); (3) maintaining the current process of a single examiner on an application; or (4) using some other option of how work is performed by examiners?

*Issue 7:* One way of adopting aspects of Unity of Invention without making any statutory changes would be for the USPTO to use its authority under the continued examination provisions of 35 U.S.C. 132(b) (authorizes request for continued examination or RCE practice) to permit applicants to pay an RCE fee and submit or rejoin claims to additional inventions after prosecution has been closed on a first invention, so long as the claims presented with the RCE fee either depend from or otherwise include the features of the allowed claims which make a contribution over the prior art. In this option, most applications will continue to be examined under the USPTO's current restriction practice. Under any new provisions to implement this option, when a claim is determined to be allowable, the applicant would be entitled to request continued examination under the Unity of Invention standard. The required submission would be additional claims that either depend from or otherwise include the features of the earlier-examined claims that are in condition for allowance (if such additional claims were not previously pending in the application).

Should the USPTO consider this option?

Should this option be available only to applicants whose applications are published?

If so, how should the new RCE fee be set relative to the current fee structure?

*Issue 8:* As a second example of adopting aspects of Unity of Invention without making any statutory changes, the USPTO could use its authority under continued examination to permit requests that the USPTO continue examination of claims which were withdrawn from consideration. This option would require applicants to make a decision to request continued examination rather than file a divisional application, to pay a fee for the treatment of one additional invention, and to present claims drawn only to that additional invention. This option would be available in addition to the continuing option of filing a divisional application.

Should the USPTO consider this option?

If so, how should the loss in issue and maintenance fee collections be offset relative to the current structure?

*Issue 9:* In view of the previous questions and the range of issues and options, should the USPTO consider: (1) Seeking a change to 35 U.S.C. 121 to adopt a Unity of Invention standard (and if so, what would such statutory change be, including whether such a statute would provide for applicants to pay for additional inventions that lack Unity of Invention to be examined in the same application); (2) maintaining the current restriction practice in the USPTO; and/or (3) modifying the USPTO rules and procedures to adopt aspects of Unity of Invention practice without making any statutory changes (if so, in what manner should rule changes be made)?

*Issue 10:* Do you have other solutions to offer which are not addressed in this notice?

Dated: May 9, 2003.

**James E. Rogan,**

*Under Secretary of Commerce for Intellectual Property and, Director of the United States Patent and Trademark Office.*

[FR Doc. 03–12500 Filed 5–19–03; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Defense will submit to the Office of Management and Budget for emergency processing, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 35).

**DATES:** An approval date by May 23, 2003, has been requested.

*Title and OMB Number:* Foreign Sourcing for Defense Applications; OMB Number 0704–0419.

*Type of Request:* Reinstatement.

*Number of Respondents:* 500

*Responses per Response:* 1.

*Annual Responses:* 500.

*Average Burden per Response:* 5 hours.

*Annual Burden Hours:* 2,500.

*Needs and Uses:* This information collection is required for the Department of Defense to assess the impact of potential supply disruption of key components provided by non-US suppliers. The information to be analyzed under the study shall be collected from prime contractors and first and second tier subcontractors. Specifically, DoD will determine the: (1) Extent of foreign sourcing within the specified defense products; (2) impact such foreign sourcing has on military readiness; and, (3) extent to which DoD or contractor policies, procedures, practices, or actions encourage or discourage consideration of foreign sources for defense products.

*Affected Public:* Business or Other For-Profit.

*Frequency:* One-time.

*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 request for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 13, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03–12505 Filed 5–19–03; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Missile Defense, Phase III (Modeling and Simulation) will meet in closed session on June 4, 2003, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA. The Task Force will assess: the scope of the modeling and simulation effort; the appropriateness of the level of fidelity of classes of simulations; the impact of communications in the end-to-end models; the approaches to ensuring the validity of simulations for all uses, including exercises and wargaming done for training and operations concept development; and additional opportunities for modeling and simulation contribution to Ballistic Missile Defense Systems development and evaluation.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will address the above mentioned issues in a system of systems context with particular emphasis on battle management systems, command and control systems, and the global sensor system. The Task Force will provide advice on the state of modeling and simulation for use in assessing overall performance of segments of the Ballistic Missile Defense Systems; e.g., ground-based midcourse intercept system, space-based interceptor system.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: May 13, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer Department of Defense.*

[FR Doc. 03–12506 Filed 5–19–03; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to Correct a System of Records.

**SUMMARY:** The Department of the Army altered the system of records notice A0635–200 TAPC, entitled 'Separations: Administrative Board Proceedings' on December 8, 2000, at 65 FR 77002. The alteration consisted of adding a new routine use. Although the change was listed as part of the publication, the notice, as amended, did not contain the new routine use. This publication corrects this administrative oversight.

**DATES:** This proposed action will be effective without further notice on June 19, 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: May 13, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0635–200 TAPC**

**SYSTEM NAME:**

Separations: Administrative Board Proceedings.

**SYSTEM LOCATION:**

U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street Alexandria, VA 22332–0478. Segments exist at Major Army Commands and subordinate commands, field operating agencies, and activities exercising general courts-martial jurisdiction. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military members on whom allegations of defective enlistment/agreement/fraudulent entry/alcohol or other drug abuse rehabilitation failure/unsatisfactory performance/misconduct/homosexuality under the provisions of Chapters 7, 9, 13, 14, or 15 of Army Regulation 635–200, Enlisted Personnel, result in administrative board proceedings.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Notice to service member of allegations on which proposed separation from the Army is based; supporting documentation; DA Form 2627, Records of Proceedings under Article 15, UCMJ; DD Form 493, Extract of Military Records of Previous Convictions; medical evaluations; military occupational specialty evaluation and aptitude scores; member's statements, testimony, witness statements, affidavits, rights waiver record; hearing transcript; board findings and recommendations for separation or retention; final action.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 1169, Regular enlisted members; limitations on discharge, 10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*; Department of Defense Directive 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN).

**PURPOSE(S):**

Information is used by processing activities and the approval authority to determine if the member meets the requirements for retention or separation.

**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 victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

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 individual's surname or Social Security Number.

**SAFEGUARDS:**

Records are accessed only by designated persons having official need; in locked cabinets, in locked rooms within secure buildings.

**RETENTION AND DISPOSAL:**

The original of board proceedings becomes a permanent part of the member's Official Military Personnel Record. When separation is ordered, a copy is sent to member's commander where it is retained for two years before being destroyed. When separation is not ordered, board proceedings are filed at the headquarters of the separation authority for two years, then destroyed. A copy of board proceedings in cases where the final authority is the U.S. Total Army Personnel Command, pursuant to Army Regulation 635–200, is retained by that headquarters (TAPC-PDT) for one year following decision.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the installation where administrative board convened or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

**RECORD ACCESS PROCEDURES:**

If individual has been separated from the Army, address written inquiries to the National Personnel Records Center, General Services Administration, 9700 Page Avenue, St Louis, MO 63132–5200: proceedings will be part of the Official Military Personnel Record.

If member is on active duty, address written inquiries to the commander of the installation where administrative board convened.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, 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.

**RECORD SOURCE CATEGORIES:**

From the individual; individual's commander; Army personnel, medical, and/or investigative records; witnesses; the Administrative Separation Board; federal, state, local, and/or foreign law enforcement agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 03–12507 Filed 5–19–03; 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 delete and amend systems of records.

**SUMMARY:** The Department of the Air Force is deleting four systems of records notices from its existing inventory of record systems and amending four notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

Three of 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:** This proposed actions will be effective without further notice on June 19, 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: May 13, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

## Deletions

### F033 AFSG A

**SYSTEM NAME:**

High Level Inquiry File (June 11, 1997, 62 FR 31793).

Reason: Records are now being maintained under the Air Force Privacy Act system of records notice F033 AFSG B, entitled 'Professional Inquiry Records System'.

### F036 AETC C

**SYSTEM NAME:**

Air Force Reserve Officer Training Corps Qualifying Test Scoring System (June 11, 1997, 62 FR 31793).

Reason: The system of records is no longer needed. All records have been destroyed.

### F036 AETC Q

**SYSTEM NAME:**

Institutional Research Analysis System (June 11, 1997, 62 FR 31793).

Reason: The system of records was never established.

### F044 AFSGA

**SYSTEM NAME:**

United States Air Force Hearing Conservation Record System (June 11, 1997, 62 FR 31793).

Reason: Records are now being maintained under the Air Force Privacy Act systems of records notices F044 AF SG D, entitled 'Automated Medical/Dental Record System'' and F044 AF SG E, entitled 'Medical Record System'.

## Amendments

### F044 AF SG H

**SYSTEM NAME:**

Air Force Aerospace Physiology Training Programs (June 11, 1997, 62 FR 31793).

Changes:

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete 'quality performance, training flight profiles'; after 'location of training' add 'Social Security Number, rank, crew position, aero rating, organization, base assigned, MAJCOM, phone number; delete 'age, height, weight'.

**PURPOSE(S):**

After 'trainees' add 'academic grade'; delete 'performance'; delete 'Physiological' and add 'Aerospace Physiology'; delete 'Unit'; add 'Flight'; delete 'Coordinator'; add 'Consultant'; delete 'Human System Center, Data Science Division'; add 'Air Force Research Laboratory, Biodynamic and Protection Division'; delete 'Armstrong Laboratory'; add 'USAF School of Aerospace Medicine, Performance Enhancement Department,'

* * * * *

**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.'

* * * * *

**STORAGE:**

Replace entry with 'Maintained in file folders, on computers, and on computer output products.''

**SAFEGUARDS:**

Replace entry with '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.'

* * * * *

**RECORD SOURCE CATEGORIES:**

Replace entry with 'Aerospace Physiology Training Flight (APTF)'.

* * * * *

### F044 AF SG H

**SYSTEM NAME: AIR FORCE AEROSPACE PHYSIOLOGY TRAINING PROGRAMS.**

**SYSTEM LOCATION:**

Chamber Flight Records located at Human Systems Center, Data Sciences Branch, 2510 Kennedy Circle, Suite 3, Brooks Air Force Base, TX 78235–5199; Aerospace Physiology Training monthly reports at each Air Force Physiological Training Flight; Headquarters Air Force Medical Operation Agency, 110 Luke Avenue, Suite 405, Bolling Air Force Base, DC 20332–7050; Medical records at USAF School of Aerospace Medicine, Force Enhancement Department Hyperbaric Medicine Division, 2510 Kennedy Drive, Suite 117, Brooks Air Force Base, TX 78235–5119. Physiological training records at Air Force Aerospace Physiology Training Flights; individual physiological training records for non-aircrew personnel at consolidated flight record custodians at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5100.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Aircrew and non-aircrew personnel required to fly on Air Force aircraft.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Contains data on attendance at formal training, type of course received, Social Security Number, rank, crew position, aero rating, organization, base assigned, MAJCOM, phone number, and sex of trainees.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force and Air Force Instruction 11–403, Air Force Aerospace Physiological Training Program.

**PURPOSE(S):**

Authenticate type of training, location and trainees academic grade during course. Flight profiles (altitude chamber) and any reactions occurring during flight are maintained by each Aerospace Physiology Training Flight for future authentication of training. Additional authentication is provided flight managers and scheduling officers and copies of flight profiles and reaction data are provided United States Air Force School of Aerospace Medicine for research. A compilation of select data is forwarded to appropriate Command Consultant for Physiological Training for management purposes, to United States Air Force School of Aerospace Medicine, and Air Force Research Laboratory, Biodynamic and Protection Division for analysis and research, and to the Air Force Medical Operations Agency for management and research. Data for specific reactors to low pressure are handled as medical records with additional distribution to appropriate Major Air Command Surgeon for information and possible corrective action, to USAF School of Aerospace Medicine, Performance Enhancement Department, Hyperbaric Medicine Division for research and analysis and to Headquarters Air Force Medical Operations Agency for policy/management/statistical and research analysis.

**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.

**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:**

Maintained in file folders, on computers, and on computer output products.

**RETRIEVABILITY:**

Data relative to reactors to low pressure, management analysis procedures retrieved by Social Security Number. Authentication of training filed by name.

**SAFEGUARDS:**

Records are accessed by commanders of medical centers and hospitals 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.

**RETENTION AND DISPOSAL:**

Chamber Flight Record at United States Air Force School of Aerospace Medicine retained until entered into computer files, until superseded, obsolete, or no longer needed for reference. Physiological Training Monthly Reports at Headquarters Air Force Medical Operations Agency and 89th AMDS/SGPT, Andrews AFB are retained in secure databases no longer needed for reference. Copies at Aerospace Physiology Training Flights are retained in office files or databases until no longer needed for reference, or on inactivation. Physiological Training Record are retained until no longer needed for reference; Individual Physiological Training Records for non-flying personnel retained as a part of individual medical record until member separates from active or Reserve duty. For flying personnel, record is retained in flight records and turned over to individual upon discharge, separation, or retirement.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Air Force Medical Operations Agency, 110 Luke Avenue, Suite 405, Bolling Air Force Base, DC 20332–7050.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief Aerospace Physiology, Air Force Medical Operations Agency, 110 Luke Avenue, Suite 405, Bolling Air Force Base, DC 20332–7050.

Students should provide full name, military status, approximate date and last location of training; officers and technicians assigned Air Force Aerospace Physiology Programs provide full name and location of last training.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief Aerospace Physiology, Air Force Medical Operations Agency, 110 Luke Avenue, Suite 405, Bolling Air Force Base, DC 20332–7050.

Students should provide full name, military status, approximate date and last location of training; officers and technicians assigned Air Force Aerospace Physiology Programs provide full name and location of last training.

**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:**

Aerospace Physiology Training Flight.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

## F044 AF SG B

**SYSTEM NAME:**

Drug Abuse Rehabilitation Report System (June 11, 1997, 62 FR 31793).

**CHANGES:**

* * * * *

**STORAGE:**

Replace entry with 'Maintained in file folders and on computer, and on computer output products.'

**RETENTION AND DISPOSAL:**

Add to entry 'Computer records are destroyed by erasing, deleting, or overwriting.'

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## F044 AF SG B

**SYSTEM NAME:**

Drug Abuse Rehabilitation Report System.

**SYSTEM LOCATION:**

Headquarters United States Air Force and major command headquarters.

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:**

Any active duty military personnel who are confirmed as drug abusers as a result of drug abuse urinalysis testing. These individuals are not patients as defined in 42 U.S.C. 300s–3(6).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains Drug Abuse Rehabilitation Reports in Electrical Message Form in which demographic data; urine testing results and abuser disposition are detailed.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 91–513 as applied to Federal agencies by Section 2b of E.O. 11599, June 17, 1971, Comprehensive Drug Abuse Prevention and Control Act of 1970.

**PURPOSE(S):**

At HQ USAF to provide statistical data for required reports to Department of Defense (DoD) and to the Special Action Office on Drug Abuse Prevention, White House; to perform epidemiological and statistical studies for use in evaluating the effectiveness of Air Force urinalysis testing programs; to provide information for answering congressional inquiries.

**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, and on computer output products.

**RETRIEVABILITY:**

Retrieved by Social Security Number.

**SAFEGUARDS:**

Records are accessed by custodian of the record system and are controlled by personnel screening.

**RETENTION AND DISPOSAL:**

Retained in office files for fifteen years after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting, or overwriting.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Surgeon General, Headquarters United States Air Force, 110 Luke Avenue, Room 400, Washington, DC 20332–7050.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Surgeon General, Headquarters United States Air Force, 110 Luke Avenue, Room 400, Washington, DC 20332–7050.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Surgeon General, Headquarters United States Air Force, 110 Luke Avenue, Room 400, Washington DC 20332–7050.

**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.

## F033 AFSG B

**SYSTEM NAME:**

Professional Inquiry Records System (June 11, 1997, 62 FR 31793).

**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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## F033 AFSG B

**SYSTEM NAME:**

Professional Inquiry Records System.

**SYSTEM LOCATION:**

At Headquarters United States Air Force, Office of the Surgeon General, Assistant for Congressional and Public Affairs, Bolling Air Force Base, Washington, DC 20332.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons who have corresponded with a member of Congress, White House, or other high level federal or state executive officials concerning the professional aspects of care provided in Air Force medical facilities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains copies of all correspondence concerning the inquiry; substantiating documents, such as correspondence or memorandums of telephone conversations with the appropriate medical facility, draft replies, medical records and any other background data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force.

**PURPOSE(S):**

Records are used as background data for statistical presentations, and historical evidence for repeat inquiries by the same individuals. Portions of records may be loaned or copies provided to the Department of Defense activities for use as background data in evaluating inquiries.

**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.

**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:**

Maintained in file folders.

**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. Records are protected by guards.

**RETENTION AND DISPOSAL:**

Retained in office files for two years after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Surgeon General, Headquarters, United States Air Force, 110 Luke Avenue, Room 400, Washington, DC 20332–7050.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Surgeon General, Headquarters, United States Air Force, 110 Luke Avenue, Room 400, Washington, DC 20332–7050.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Surgeon General, Headquarters, United States Air Force, 110 Luke Avenue, Room 400, Washington, DC 20332–7050.

**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 and from source documents.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

## F044 AF SG C

**SYSTEM NAME:**

Dental Health Records (June 11, 1997, 62 FR 31793).

**CHANGES:**

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**SYSTEM LOCATION:**

Delete 'Military' from 'Air Force Military Personnel Center'.

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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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## F044 AF SG C

**SYSTEM NAME:**

Dental Health Records.

**SYSTEM LOCATION:**

Air Force hospitals, medical centers and clinics; other authorized medical units serving military personnel and/or dependents. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Air Force Personnel Center, Randolph Air Force Base, TX 78150; National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5100, National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty and retired Air Force military personnel; Air Force Academy nominees/applicants; family members of military and retired personnel; foreign Nationals residing in the United States; American Red Cross personnel; other DOD civilian employees, Peace Corps and State Department personnel; Exchange Officers.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Chronological record of all care received in military dental facilities. This is primarily a record of all treatment received on an outpatient basis with supporting documentation such as consultations, dental history, laboratory, and x-ray reports; the record also includes temporary copies of appointment slips and attendance records until entered in the record.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 55, Medical and Dental Care.

**PURPOSE(S):**

Chronological record of patient's dental health while authorized care in a military dental facility. Used by patient for further dental care, other uses such as insurance requests or compensation claims as specifically authorized by the patient. Used by dentist for further dental care of the patient, research, and teaching. Used by other patient care providers within the hospital for further medical/dental care of the patient, research, and teaching. Used by hospital and dental staff for evaluation of dental staff performance in the dental care rendered; dental research; teaching; hospital accreditation; preparation of statistical reports. Used by Army, Navy, Department of Veterans Affairs, Public Health Service, and other hospitals/clinics, for further dental care of the patient if currently undergoing treatment there. Record is released only upon receipt of the patient's signed authorization or a court order. Insurance companies require the patients' written consent for release. Used for establishing insurance benefits or payment of benefits. Used by other Air Force Agencies such as Central Tumor Registry, which maintains files on all patients in whom a malignancy has been diagnosed.

**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 record system notices apply to this system, except as stipulated in 'Note' below.

Information from the inpatient or outpatient dental records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents.

Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided.

Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program.

In addition, records may be disclosed to: (1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force. (2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies. (3) Private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies. (4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force. (5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs. (6) Authorized surveying bodies for professional certification and accreditations. (7) The individual's organization or government agency as necessary when required by Federal statute, E.O., or by treaty.

**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/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

**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:**

Maintained in file folders, notebooks/binders, visible file binders/cabinets, card files, on x-ray film, and as photographs.

**RETRIEVABILITY:**

Retrieved by name and Social Security Number.

**SAFEGUARDS:**

Records are accessed by commanders of medical centers and hospitals, 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, protected by guards, and controlled by personnel screening.

**RETENTION AND DISPOSAL:**

Records for military personnel are retained for 50 years after date of last document; for all others, 25 years. While on active duty, the Health Record of a U.S. military member is maintained at the dental unit at which the person receives treatment. On separation/retirement the records are forwarded to National Personnel Records Center (NPRC/MPR) or other designated depository; such as Air Reserve Personnel Center, if reservist; to appropriate state National Guard unit, if National Guard member, to appropriate Department of Veterans Affairs Regional Office, if VA claim has been filed. Records of other personnel may be hand carried or mailed to the next military medical facility at which treatment will be received, or the records are retained at the treating facility for a minimum of 1 year after date of last treatment then retired to NPRC or other designated depository, such as but not limited to, Commandant (G-PO) U.S. Coast Guard, Washington DC 20593 for Coast Guard active duty members; Medical Director, American Red Cross, Washington DC 20006 for Red Cross Personnel.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Surgeon General, Headquarters United States Air Force. Assistant Surgeon General for Dental Services USAF; commanders of medical centers, hospitals, clinics, and medical aid stations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the system manager giving complete name, social security number of individual through whom eligibility for care is established, year in which treatment was received, location treatment was received, whether treatment was on an inpatient or outpatient basis.

**RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address requests to the system manager. An appropriately signed authorization for the release of information is required with complete name and Social Security Number of individual through whom eligibility for care was established.

**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 patient and other medical institutions.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 03–12508 Filed 5–19–03; 8:45 am]

BILLING CODE 5000–08–P

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.206A]**

## Office of Elementary and Secondary Education; Jacob K. Javits Gifted and Talented Students Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003 and Establishing Two Absolute Priorities

*Purpose of Program:* The purpose of the Jacob K. Javits Gifted and Talented Students Education Program (the Javits program) is to carry out a coordinated program of scientifically based research, demonstration projects, innovative strategies, and similar activities designed to build and enhance the ability of elementary and secondary schools nationwide to meet the special educational needs of gifted and talented students.

*Eligible Applicants:* State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education, other public agencies, and other private agencies and organizations (including Indian tribes and Indian organizations and Native Hawaiian organizations). Under the first priority in this competition, all of these entities are eligible to apply. Under the second priority, an SEA and one or more LEAs collaborate on the project and either the SEA or an LEA is eligible to apply and to serve as the fiscal agent.

*Notification of Intent to Apply for Funding:* We strongly encourage each potential applicant to notify us by June 6, 2003, of its intent to submit an application for funding. We will be able to develop a more efficient process of reviewing grant applications if we have an early estimate of the number of entities that intend to apply for funding under this competition. Notifications should be sent by e-mail to the following Internet address: *jacobk.javits@ed.gov.*

Please put ''Notice of Intent, Priority 1'' or ''Notice of Intent, Priority 2'' in the subject line. Applicants that choose not to provide this e-mail notification may still apply for funding.

*Applications Available:* May 20, 2003.

*Deadline for Transmittal of Applications:* July 7, 2003.

*Deadline for Intergovernmental Review:* September 2, 2003.

*Available Funds:* Priority 1—$5,100,000. Priority 2—$3,676,875.

*Estimated Number of Awards:* Priority 1—10. Priority 2—12.

*Estimated Size of Awards:* Priority 1—$400,000—$600,000. Priority 2—$200,000—$300,000.

*Estimated Average Size of Awards:* Priority 1—$500,000. Priority 2—$250,000.

**Note:** These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.)

*Project Period:* Up to 60 months for the first priority and up to 36 months for the second priority.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

*Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants are strongly encouraged to limit the program narrative (text plus all figures, charts, tables and diagrams) to the equivalent of 25 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.
- 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 Standard Form 424; the project abstract; the budget section, including the narrative budget justification; the assurances and certifications; or the resumes, bibliography, or letters of support.

We have found that reviewers are able to conduct the highest-quality review when applications are concise and easy to read, with pages consecutively numbered.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Elementary and Secondary Education invites applications for new grant awards for FY 2003 for the Javits program. In 2001, the Javits program was rewritten in its entirety by Pub. L. 107–110, the No Child Left Behind Act (NCLB) as the ''Jacob K. Javits Gifted and Talented Students Education Act of 2001'' (The Act), and is now located in title V, part D, subpart 6 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), under which these grants are authorized (20 U.S.C 7253 *et seq.*). The Act supports a coordinated program of research, demonstration projects, and other activities designed to build and enhance the ability of schools nationwide to serve gifted and talented students.

The Assistant Secretary also announces two final absolute priorities and final selection criteria to govern this competition and the FY 2003 Javits program grant awards. In accordance with § 5465(a) and (b) of the statute, the Assistant Secretary intends to give priority to projects designed to: (1) develop new information that improves the capability of schools to plan, conduct, and improve programs to identify and serve gifted and talented students and, (2) identify and serve students from underrepresented groups, including economically disadvantaged, limited English proficient, and disabled students. The Assistant Secretary also will implement § 5464(c) of the statute, requiring funding of certain projects when appropriation levels for the Javits program in a given year exceed the FY 2001 appropriation.

Accordingly, the Assistant Secretary will make awards under the following two absolute priorities to encourage activities that will contribute to an understanding of the most effective ways to educate gifted and talented students. These priorities will help to target funds to high-needs populations within the general program purpose of assisting States and local school districts to better serve gifted and talented students.

The Assistant Secretary's first priority implements § 5465(a) of the statute and focuses on projects that propose to develop, conduct, ''scale up'', and evaluate programs that identify and serve gifted and talented students who are economically disadvantaged or limited English proficient, or who have disabilities, and who may not be identified and served through traditional assessment methods. According to a 2002 report by the National Research Council titled ''Minority Students in Special and Gifted Education,'' these groups of students remain significantly underrepresented at the highest levels of performance. Over the past decade, small-scale model projects and intervention strategies have produced some evidence of effectiveness in raising student achievement to high levels. The goal of this first priority is to expand upon, field-test, and evaluate research-based interventions that have existing evidence of success in increasing the proportion of economically disadvantaged, limited English proficient, or disabled students performing at high levels of achievement. Based on the experience of previous grant recipients, the Assistant Secretary believes that these projects will be most successful if they are carried out by applicants that can demonstrate an expertise in: education research and program evaluation, one or more of the core academic subject areas (English, reading or language arts, mathematics, science, foreign languages,

civics and government, economics, arts, history, and geography), the needs of disadvantaged or other underrepresented students, and gifted and talented education. In order to meet the absolute priority, projects must: (1) build on successful interventions and strategies that show evidence that they have increased student achievement, (2) draw on expertise in research and program evaluation, disciplinary knowledge in the core subject areas, the needs of underrepresented groups, and gifted and talented education, (3) expand upon the intervention by carrying it out in multiple sites, and (4) propose a careful research and evaluation plan.

The Assistant Secretary establishes this first priority after having reviewed the relevant research base and the evaluations of previously funded projects, holding discussions with project directors, and consulting with experts in the field.

The Assistant Secretary's second absolute priority implements the ''Special Rule'' in § 5464(c) of the authorizing legislation that requires any funds available in a fiscal year that exceed the amount that was available in FY 2001 to be awarded to SEAs or LEAs, or both, to carry out such activities as: research and development on gifted and talented education and how it may be used to improve the education of all students, program evaluations and information collection activities, model projects and innovative strategies, technical assistance and information dissemination, distance learning opportunities, and professional development. Because the FY 2001 appropriation was $7.5 million and the FY 2003 appropriation is $11,176,875, $3,676,875 will support Priority 2 activities. To ensure the most effective use of funds for the above-stated purposes, under this second priority the Assistant Secretary will fund collaborative projects submitted by SEAs and one or more LEAs to carry out a coordinated set of activities to build capacity to serve gifted and talented students. Under this priority, either the SEA or an LEA may submit the application on behalf of the other participants in the collaborative project and either may be the fiscal agent for the collaborative project.

*Waiver of Proposed Rulemaking:* It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules that are not taken directly from statute. Ordinarily, this practice would have applied to the priorities in this notice. However, section 437(d)(2) of the General Education Provisions Act (GEPA), exempts the Secretary from this rulemaking requirement where the Secretary has determined that going through rulemaking would cause extreme hardship to the intended beneficiaries of the program that would be affected by those rules or regulations. In accordance with section 437(d)(2) of GEPA, the Secretary has decided to forgo public comment with respect to the priorities in this notice in order to be able to make timely and high-quality awards. These priorities will apply only to the FY 2003 grant competition.

*Absolute Priorities:* Under 34 CFR 75.105(c)(3) and the Jacob K. Javits Gifted and Talented Students Education Act of 2001, the Assistant Secretary gives absolute priority to applications that meet one of the following priorities, meaning that only applications that meet one of these absolute priorities will be funded. Each application must address one of these two priorities. However, applicants cannot address both priorities in the same application. Applicants eligible to apply under both priorities must submit separate applications to address each of the priorities, and the applications will be reviewed separately.

**Absolute Priority 1—Javits Demonstration Programs**

Under this priority, applicants must propose to support projects to plan, implement, ''scale up'', and evaluate models designed to close the achievement gap and increase the number of students from underrepresented groups who are performing at high levels. Underrepresented groups include students who are economically disadvantaged, limited English proficient, or disabled.

To meet this priority each project must include all of the following:

(1) Evidence from one or more scientifically based research and evaluation studies indicating that the proposed intervention has raised the achievement of underrepresented groups to high levels of achievement in one or more core subject areas.

(2) Evidence that the applicant has significant expertise on its leadership team in research and program evaluation, knowledge in one or more core academic subject areas, experience working with underrepresented groups, and knowledge about gifted and talented education.

(3) A sound plan for implementing the model in multiple settings.

(4) A research and evaluation plan that will yield both formative and summative information on the effectiveness of the model, including student achievement data.

**Absolute Priority 2—Javits State Capacity-Building Grants**

Under this priority, SEAs, in collaboration with one or more LEAs, must propose projects to improve services to gifted and talented students and develop the capacity of the State and the LEAs to serve these students more effectively. Either the SEA, or one of the participating LEAs, may submit the application on behalf of the other participants and serve as the fiscal agent for the collaborative project. Under this priority, applicants must propose to carry out one or more of the following activities:

(1) Conducting scientifically based research on methods and techniques for identifying and teaching gifted and talented students and for using gifted and talented programs and methods to serve all students; and conducting program evaluations, surveys, and the collection, analysis, and development of information needed to accomplish the proposed project.

(2) Conducting professional development (including fellowships) for personnel (including leadership personnel) involved in the education of gifted and talented students.

(3) Establishing and operating model projects and exemplary programs for serving gifted and talented students, including innovative methods for identifying and educating students who might not be served by traditional gifted and talented programs. (These model projects might include summer programs, mentoring programs, service-learning programs, and cooperative programs involving business, industry, and education.)

(4) Implementing innovative strategies, such as cooperative learning, peer tutoring, and service learning.

(5) Providing programs of technical assistance and information dissemination, including assistance and information with respect to how gifted and talented programs and methods, where appropriate, may be adapted for use by all students.

(6) Making materials and services available through State regional educational service centers, institutions of higher education, or other entities.

(7) Providing challenging, high-level course work, disseminated through technologies (including distance learning), for individual students or groups of students in schools and LEAs that would not otherwise have the resources to provide such course work.

**Other Requirements**

The Assistant Secretary directs the applicants' attention to the requirements in § 5464(a)(2) of the statute, stating that each applicant requesting support under the Javits program must describe how:

(1) The proposed gifted and talented services, materials, and methods can be adapted, if appropriate, for use by all students, and

(2) The proposed programs can be evaluated.

*Definitions:* The definitions contained in the Jacob K. Javits Gifted and Talented Students Education Act of 2001, at title IX, part A of the ESEA, apply to the Javits program and this competition. In particular, the Assistant Secretary directs applicants' attention to the following definition:

*Core Academic Subjects.* The term ''core academic subjects'' means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. (20 U.S.C. 7801(11)).

*Selection Criteria:* The Assistant Secretary uses the following selection criteria to evaluate applications for new grants under this competition. Each of the two absolute priorities in this competition has separate selection criteria tailored to the specific requirements of the priority. These selection criteria are drawn from EDGAR § 75.210. In both sets of selection criteria, the maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

**Selection Criteria for Priority 1 (Javits Demonstration Programs)**

(1) *Significance.* (15 points.)

In determining the significance of the proposed project, the following factors are considered:

(i) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(ii) The potential for generalizing from the findings or results of the proposed project.

(2) *Quality of the project design.* (20 points.) In determining the quality of the project design of the proposed project, the following factors are considered:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the proposed activities constitute a coherent, sustained program of research and development in the field, including, as appropriate, a substantial addition to an ongoing line of inquiry.

(iii) The extent to which the proposed project represents an exceptional approach to the priority established for the competition.

(iv) The quality of the methodology to be employed in the proposed project.

(3) *Quality of project services.* (20 points.) In determining the quality of the services to be provided by the proposed project, the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants without regard to race, color, national origin, gender, age, or disability is considered. In addition, the following factors are considered:

(i) 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.

(ii) The likelihood that the services to be provided will lead to improvements in the achievement of students as measured against rigorous academic standards.

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(4) *Quality of project personnel.* (10 points.) In determining the quality of project personnel, the extent to which the applicant encourages applications for employment without regard to race, color, national origin, gender, age, or disability is considered. In addition, the following factors are considered:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(5) *Adequacy of resources.* (10 points.) In determining the adequacy of resources for the proposed project, the following factors are considered:

(i) The adequacy of support, including facilities, equipment, supplies and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(6) *Quality of project evaluation (25 points.)* In determining the quality of the project evaluation, the following factors are considered:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

**Section Criteria for Priority 2 (Javits State Capacity-Building Grants)**

(1) *Need for the project.* (15 points.) In determining the need for the project, the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses, is considered.

(2) *Quality of the project design.* (20 points.) In determining the quality of the design of the proposed project, the following factors are considered:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project represents an exceptional approach to the priority established for the competition.

(3) *Quality of project services.* (15 points.) In determining the quality of the services to be provided by the proposed project, the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants without regard to race, color, national origin, gender, age, or disability is considered. In addition, the following factors are considered:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(4) *Quality of project personnel.* (10 points.)

In determining the quality of the project personnel, the extent to which the applicant encourages applications for employment without regard to race, color, national origin, gender, age, or disability, is considered. In addition, the following factors are considered:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of the key project personnel.

(5) *Adequacy of resources.* (10 points.)

The adequacy of resources for the proposed project is considered.

(6) *Quality of the management plan.* (10 points.)

In determining the quality of the management plan for the proposed project, the following factors are considered:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of the procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(7) *Quality of the project evaluation.* (20 points.)

In determining the quality of the evaluation, the following factors are considered:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

## Application Procedures

*Pilot Project for Electronic Submission of Applications*

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Javits program—CFDA # 84.206A is one of the programs included in the pilot project. If you are an applicant under the Javits program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Javits program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Javits program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project in the application package.

*For Applications Contact:* Education Publications Center (EDPubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/about/ordering.jsp.*

*Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.*

If you request an application from ED Pubs, identify this competition as: CFDA number 84.206A.

**FOR FURTHER INFORMATION CONTACT:**

*For Information on Priority 1:* Lar'Mara O'Neal, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6200. Telephone: (202) 205–1860 or via Internet: jacobk.javits@ed.gov.

*For Information on Priority 2:* Susan Toy, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6200. Telephone: (202) 260–0995 or via Internet: *jacobk.javits@ed.gov.*

If you use a telecommunications devise for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document, or an application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request using the contact information provided under *For Applications Contact.*

*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 the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO

Access at: *http://www.access.gpo.gov/nara/index.html.*

**Program Authority:** 20 U.S.C. 7253 *et seq.*

Dated: May 14, 2003.

**Eugene W. Hickok,**

*Under Secretary of Education.*

[FR Doc. 03–12602 Filed 5–19–03; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Federal Interagency Coordinating Council Meeting

**AGENCY:** Department of Education.

**ACTION:** Notice of a public meeting.

**SUMMARY:** This notice describes the schedule and agenda of the forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in policy discussions related to health services for young children with disabilities and their families. The meeting will be open and accessible to the general public.

**DATES:** FICC Meeting: Thursday, June 12, 2003 from 9 a.m. to 4:30 p.m.

**ADDRESSES:** U.S. Department of Health and Human Services, 200 Independence Avenue, SW., Room 505A, Washington, DC, 20201.

**FOR FURTHER INFORMATION CONTACT:** Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3090, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

**SUPPLEMENTARY INFORMATION:** The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3090, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

**Loretta Petty Chittum,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 03–12525 Filed 5–19–03; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–301–076]**

### ANR Pipeline Company; Notice of Negotiated Rates

May 14, 2003.

Take notice that on May 9, 2003, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Twelfth Revised Sheet No. 190, Second Revised Volume No. 1, with an effective date of April 1, 2003.

ANR states that the tariff sheet is being filed in compliance with the Commission's April 30, 2003, order accepting ANR's negotiated rate agreement with Dynegy Marketing and Trade, effective April 1, 2003.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Comment Date:* May 21, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12627 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER02–1420–009]**

### Midwest Independent Transmission System Operator, Inc.; Notice of Filing

May 14, 2003.

Take notice that on April 4, 2003, Midwest Independent Transmission System Operator, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission) a request to withdraw the Resulting Company Open Access Transmission Tariff (Resulting Company Tariff) and the Agreement of Transmission Owners to Organize (Resulting Company Agreement) filed with the Commission on November 1, 2002, in Docket No. ER02–1420–006.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

*Comment Date:* May 22, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12622 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP02–416–001]**

### Southern Star Central Gas Pipeline, Inc.; Notice of Site Visit

May 14, 2003.

On Wednesday, May 28, 2003, Office of Energy Projects staff will participate in a site visit to the area proposed for construction of natural gas pipeline facilities by Southern Star Central Gas Pipeline, Inc. for its Southwest Missouri Expansion Project in Cherokee County, Kansas, and Jasper County, Missouri, in the above-referenced docket. The site visit will begin at 8:30 a.m. from the Holiday Inn, 3615 Range Line Road, Joplin, Missouri. All interested parties may attend the site visit. Those planning to attend must provide their own transportation. Anyone interested in additional information on the site visit may contact the Commission's Office of External Affairs at 1–866–208–FERC.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12620 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–471–002]**

### Southwest Gas Storage Company; Notice of Compliance Filing

May 14, 2003.

Take notice that on May 9, 2003, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub First Revised Sheet No. 100, to be effective May 25, 2003.

Southwest states that the purpose of this filing, made in accordance with the provisions of section 154.204 of the Commission's regulations, is to conform the pagination and content of Tariff Sheet No. 100 to reflect the Commission's acceptance of tariff revisions in Docket Nos. RP00–471–001 and RP02–447–000. Southwest is proposing no change to the content on Sheet No. 100 that has been accepted by the Commission in these two separate filings.

Southwest states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Protest Date:* May 21, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12624 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP03–475–000]**

### Venice Gathering System, L.L.C.; Notice of Compliance Filing

May 14, 2003.

Take notice that on May 9, 2003, Venice Gathering System, L.L.C. (Venice) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective July 1, 2003, except for those identified with an asterisk, which are to become effective May 1, 2004:

Fourth Revised Sheet No. 49
Third Revised Sheet No. 119*
Fourth Revised Sheet No. 122*
First Revised Sheet No. 122A*
Fourth Revised Sheet No. 123*
First Revised Sheet No. 123A*
Second Revised Sheet No. 185
First Revised Sheet No. 191
Fifth Revised Sheet No. 192
Sixth Revised Sheet No. 192*
Fifth Revised Sheet No. 196
Sixth Revised Sheet No. 196*
Third Revised Sheet No. 197
Fourth Revised Sheet No. 197*
First Revised Sheet No. 198*
Original Sheet No. 199*

Venice states that these proposed tariff sheets are intended to comply with the Commission's Order No. 587-R. In particular, Venice states that the proposed tariff changes provide for the adoption of NAESB Standards Version 1.6, and the WGQ standards governing partial day recalls.

Venice further states that certain of the tariff changes required under Order No. 587–R cannot be made effective on July 1, 2003, due to delays in the delivery of the software necessary to implement such changes. Venice states that the vendor has indicated that necessary software will be delivered on or before March 31, 2004. Accordingly, Venice has submitted tariff sheets with a proposed effective date of July 1, 2003, for all Version 1.6 changes that are not dependent upon the new software; those tariff changes that cannot be implemented until receipt of the new software bear a proposed effective date

of May 1, 2004. The May 1, 2004, effective date is proposed because, according to Venice, approximately one month additional time will be required to test and implement the new software.

Venice states that copies of the filing have been mailed to each customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Comment Date:* May 21, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12626 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP03–387–001]**

## Viking Gas Transmission Company; Notice of Compliance Filing

May 14, 2003.

Take notice that on May 9, 2003, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 15E, to become effective July 1, 2003.

Viking states that the purpose of this filing is to correct a pagination error on Sheet No. 15E filed on May 1, 2003.

Viking states that copies of this filing have been sent to all of Viking's contracted shippers and interested State regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

*Protest Date:* May 21, 2003.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12625 Filed 5–19–03; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. EG03–66–000, *et al.*]**

## Allegheny Energy Supply Conemaugh, LLC; Electric Rate and Corporate Filings.

May 13, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification:

### 1. Allegheny Energy Supply Conemaugh, LLC

[Docket No. EG03–66–000]

Take notice that on May 7, 2003, Allegheny Energy Supply Conemaugh, LLC filed an amendment to its Application for Determination of Exempt Wholesale Generator Status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended (PUHCA) to correct the description of the eligible facility.

*Comment Date:* May 22, 2003.

### 2. Kinder Morgan Michigan, LLC v. Michigan Electric Transmission Company, LLC

[Docket No. EL03–12–003]

Take notice that on May 7, 2003, Michigan Electric Transmission Company, LLC (METC) submitted for filing with the Federal Energy Regulatory Commission (Commission), a substitute Generator Interconnection & Operating Agreement (GIOA) with Kinder Morgan Michigan LLC in compliance with the Commission's April 22, 2003, Order in Docket No. EL03–12–002.

A copy of the filing was served on all parties compiled on the official service list in Docket No. EL03–12.

*Comment Date:* May 28, 2003.

### 3. Kinder Morgan Michigan, LLC v. Michigan Electric Transmission Company, LLC

[Docket No. EL03–12–004]

Take notice that on May 8, 2003, Michigan Electric Transmission Company, LLC (METC) submitted for filing with the Federal Energy Regulatory Commission (Commission), a Generator Interconnection & Operating Agreement (GIOA) with Kinder Morgan Michigan LLC. METC requests that the Commission accept the GIOA and allow it to replace the GIOA submitted by METC on May 7, 2003, in compliance with the Commission's April 22, 2003, Order in Docket No. EL03–12–002. METC explains that the appropriate Order No. 614 designations were inadvertently omitted from the May 7 Compliance Filing, and this submission reflects the appropriate designations. There are no additional changes.

A copy was served on all parties compiled on the official service list in Docket No. EL03–12.

*Comment Date:* May 29, 2003.

### 4. Horsehead Industries, Inc.

[ER00–2333–001]

Take notice that on May 6, 2003, Horsehead Industries, Inc., submitted for filing a revised Triennial Market Analysis through its unincorporated division Zinc Corporation of America.

*Comment Date:* May 27, 2003.

### 5. Entergy Services, Inc.

[Docket No. ER02–2014–011]

Take notice that on May 7, 2003, Entergy Services, Inc., (Entergy) tendered for filing a Second Informational Report regarding Entergy's implementation of the

Generator Operating Limits as required by the Commission's Order issued March 13, 2003, in Docket No. ER02–2014–006.

*Comment Date:* May 28, 2003.

**6. American Electric Power Service Corporation; Commonwealth Edison Company; Dayton Power and Light Company; Virginia Electric and Power Company; PJM Interconnection, L.L.C.**

[Docket No. ER03–262–004]

Take notice that on May 7, 2003, New PJM Companies and PJM Interconnection, L.L.C. filed a second errata for a single exhibit that was inadvertently omitted from the filing in Docket No. ER03–262–004 submitted on May 6, 2003.

*Comment Date:* May 28, 2003.

**7. Entergy Services, Inc.**

[Docket No. ER03–363–002]

Take notice that on May 2, 2003, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) filed an amendment to its filing for approval of the Long-Term Firm Point-to-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and City Water and Light of The City of Jonesboro, Arkansas.

*Comment Date:* May 23, 2003.

**8. Unitil Power Corp.**

[Docket No. ER03–483–001]

Take notice that on May 7, 2003, Unitil Power Corp. submitted for filing information concerning the rate impact of the Amended System Agreement as required by the Commission's letter order issued on March 21, 2003, in Docket No. ER03–483–000.

Unitil Power Corp., states that a copy of the filing was served on the service list in Docket No. ER03–483–000 and on the New Hampshire Public Utilities Commission.

*Comment Date:* May 28, 2003.

**9. Baltimore Gas and Electric Company**

[Docket No. ER03–551–001]

Take notice that on May 8, 2003, Baltimore Gas and Electric Company (BGE), submitted for filing a revised Interconnection Agreement dated May 7, 2003, between BGE and Constellation Power Source Generation, Inc., pursuant to Commission Order dated April 10, 2003. BGE states that the revised Interconnection Agreement has been designated as Original Service Schedule No. 871 under PJM's Open Access Transmission Tariff.

*Comment Date:* May 29, 2003.

**10. MidAmerican Energy Company**

[Docket No. ER03–825–000]

Take notice that on May 7, 2003, MidAmerican Energy Company (MidAmerican), filed with the Commission a Construction and Expense Reimbursement Agreement with the City of Ames, Iowa (Ames), dated April 30, 2003, in order to facilitate the provisions of service pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of May 8, 2003, for the Agreement with Ames, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican states that it has served a copy of the filing on Ames, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment Date:* May 28, 2003.

**11. Southern California Edison Company**

[Docket No. ER03–826–000]

Take notice that on May 7, 2003, Southern California Edison Company (SCE) tendered for filing the amended Service Agreement for Wholesale Distribution Service (Amended Service Agreement) and the amended Added Facilities Agreement (Amended Added Facilities Agreement) between the City of Colton (Colton) and SCE. SCE states that the purpose of the amendments is to reflect required changes to these agreements due to the interconnection of the Agua Mansa Project to Colton's electrical system.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Colton.

*Comment Date:* May 28, 2004.

**12. Florida Power Corporation**

[Docket No. ER03–829–000]

Take notice that on May 7, 2003, Florida Power Corporation (Florida Power) doing business as Progress Energy Florida (Progress Florida), tendered for filing cost support updates for its interchange service agreements pursuant to part 35 of the Commission's regulations. Florida Power states that it also filed revised rate schedule sheets incorporating necessary rate changes reflecting the cost updates. Florida Power indicates that the filing also updates the Real Power Loss Factors in the Open Access Transmission Tariffs of Florida Power and Carolina Power and Light Company.

Florida Power states that copies of the filing letter (which identifies the updated charges) have been served on the counter-parties to the interchange service agreements and the interested state utility commissions. The entire submittal has been posted on the Florida Power and Carolina Power & Light Company Web site at: *www.progress-energy.com.*

*Comment Date:* May 28, 2003.

**13. Minnesota Power**

[Docket No. ER03–831–000]

Take notice that on May 8, 2003, Minnesota Power tendered for filing Original Sheet Nos. 39, 40, 41, and 42 of the Second Revised Rate Schedule FERC No. 125, designated as required by Commission Order No. 614, for wholesale service to the Public Utilities Commission of Brainerd, Minnesota (Brainerd). Minnesota Power states that this filing includes an extension of the term of the Electric Service Agreement between Brainerd and Minnesota Power and a wheeling rate for energy wheeled by Brainerd over Minnesota Power facilities. Minnesota Power requests an effective date of February 28, 2003, for this filing.

*Comment Date:* May 29, 2003.

**14. Alliant Energy Corporate Services, Inc.**

[Docket No. ER03–832–000]

Take notice that on May 8, 2003, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC) tendered for filing a Negotiated Capacity Transaction (Agreement) between IPC and Wisconsin Power & Light Company (WPL) for the period May 1 through October 31, 2003. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., IPC, WPL and Alliant Energy.

*Comment Date:* May 29, 2003.

**15. Tampa Electric Company**

[Docket No. ER03–834–000]

Take notice that on May 8, 2003, Tampa Electric Company (Tampa Electric) tendered for filing Notices of Cancellation of the service agreements under its Market-Based Sales Tariff with Florida Power Corporation (FPC), Duke Energy Trading and Marketing, L.L.C. (Duke Energy), and Enron Power Marketing, Inc. (Enron). Tampa Electric proposes that the cancellations be made effective on July 7, 2003.

Tampa Electric states that copies of the filing have been served on FPC, Duke Energy, Enron, and the Florida Public Service Commission.

*Comment Date:* May 29, 2003.

**16. PJM Interconnection, L.L.C.**

[Docket No. ER03–835–000]

Take notice that on May 8, 2003, PJM Interconnection, L.L.C. (PJM), submitted amendments to the Schedule 2 chart of the PJM Open Access Transmission Tariff (PJM Tariff) to incorporate into the Sixth Revised version of the PJM Tariff the revenue requirements for Reactive Supply and Voltage Control from General Sources Service (Reactive Service) that the Commission accepted for WPS Westwood Generation, LLC (Westwood), Liberty Electric Power, LLC (Liberty), Armstrong Energy Limited Partnership, LLLP (Armstrong), Handsome Lake Energy, LLC (Handsome Lake), Pleasants Energy, LLC (Pleasants) and Safe Harbor Water Power Corporation (Safe Harbor). PJM states that it also filed an amendment to the Schedule 2 chart in the Fifth Revised version of the PJM Tariff to reflect Handsome Lake's revised Reactive Service revenue requirements that were effective prior to the requested effective date of the Sixth Revised version of the PJM Tariff, but not previously incorporated into the Fifth Revised version of the PJM Tariff.

Consistent with the requested effective date of the Sixth Revised version of the PJM Tariff and the effective dates of the Commission's acceptance of the parties' Reactive Service revenue requirements, PJM requests the following effective dates for the revised sheets of the Sixth Revised version of the PJM Tariff filed in this docket: (1) First Revised Sheet No. 230—March 20, 2003, (incorporating Westwood's Liberty's, Armstrong's and Handsome Lake's revenue requirements); and (2) Second Revised Sheet No. 230—April 1, 2003, (incorporating Pleasants' and Safe Harbor's revenue requirements). PJM also requests an effective date of February 1, 2003, for the Eighth Revised Sheet No. 112A of the Fifth Revised volume of the PJM Tariff (incorporating Handsome Lake's revenue requirements).

PJM states that copies of this filing have been served on all PJM members, Westwood, Liberty, Armstrong, Handsome Lake, Pleasants, Safe Harbor, and each state electric utility regulatory commission in the PJM region.

*Comment Date:* May 29, 2003.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12621 Filed 5–19–03; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PA02–2–000]**

### Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices; Notice of Intent to Re-Release Information

May 14, 2003.

On March 5, 2003, the Commission issued a notice that it intended to release to the public information collected in its investigation into the manipulation of energy prices in the west, and sought, by March 12, 2003, comments from those companies and individuals who submitted information during the course of the investigation. On March 21, 2003, the Commission issued an order addressing the comments and responses to its March 5 notice, and further announced that it would release the information, except as noted in the order, in no less than five days after issuance of the order.[1] One exception to the release was personal personnel information. Thereafter, on March 26, 2003, the Commission released the remaining information.

Subsequent to the release of the information, on March 28, 2003, the Commission received the first of numerous motions from Enron asking that certain parts of the released information be removed from public access. These motions in particular attempted to identify Enron employees' personal information. The Commission also received calls on its Enforcement Hotline from Enron employees who were concerned about their personal information being available on the internet. As quickly as possible, the Commission staff accommodated these requests in keeping with the Commission's stated concerns in the March 21 order about releasing certain personal data.

On April 7, 2003, the Commission removed all Enron e-mails from its web site. The Commission's action removing the Enron e-mails from its Web site coincided exactly with the United States Court of Appeals for the Fifth Circuit's stay of the March 21 order to the extent the stay action implicated the withdrawal of Enron e-mails from the agency's web site. *See Enron Corp.* v. *FERC*, No. 03–60295.

On April 22, 2003, the Commission issued an order stating that it would not re-release any of the documents that respondents sought to be withheld with specificity until the Commission reviewed those documents and gave the respondents and the public notice of its intent to re-release specific documents.[2] In the April 22 order, the Commission directed its staff to review the data proffered for removal and ascertain whether indeed it should be in the public domain. With respect to the data that was removed from the Commission's Web site pursuant to the April 7 notice but that was not identified by any company or individual for permanent removal, the Commission directed its staff to return that data to the agency's web site.

Take notice that pursuant to the Commission's April 22 order in this docket, no later than May 14, 2003, the Commission shall re-release the data that was removed from the Commission's Web site pursuant to the April 7 notice but was not identified by any company or individual for permanent removal. The data that was identified for permanent removal will not be re-released, if at all, until the Commission's staff has reviewed the documents as directed by the April 22

[1] 102 FERC ¶ 61,311 (2003).

[2] 103 FERC ¶ 61,077 (2003).

order. The Commission will issue further orders as that review progresses.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 03–12623 Filed 5–19–03; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OW–2003–0013, FRL–7501–2]**

## Agency Information Collection Activities: Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Act); Comment Request

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Act), hereinafter referred to as the Bioterrorism Act; ICR No. 2103.02; OMB Control No. 2040–0253; expiration date September 30, 2003. Before submitting this continuing ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before July 21, 2003.

**ADDRESSES:** Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Susan Dolgin, Water Protection Task Force, Office of Ground Water and Drinking Water, 4601M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9895; fax number: (202) 564–3753; e-mail address: *dolgin.susan@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number OW–2003–0013, which is available for public viewing at the Water 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 Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), (2) by email to *OW-Docket@epa.gov,* or (3) by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket (mail code 4101T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information for which public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

*Affected Entities:* Entities potentially affected by this action are community water systems serving more than 3,300 people.

*Title:* Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Act); OMB Control Number 2040–0253; EPA ICR Number 2103.02; expiring September 30, 2003.

*Abstract:* The Bioterrorism Act requires each community water system serving a population of more than 3,300 people to conduct a vulnerability assessment of its water system and to prepare or revise an emergency response plan that incorporates the results of the vulnerability assessment. These requirements are mandatory under the statute. EPA will use the information collected under this ICR to determine whether community water systems have conducted vulnerability assessments and prepared or revised emergency response plans in compliance with that Act. EPA is required to protect all vulnerability assessments and all information derived from them from disclosure to unauthorized parties and has established an Information Protection Protocol describing how that will be accomplished.

This Notice provides the opportunity to comment on EPA's request to renew this ICR, which was approved by the Office of Management and Budget (OMB) on an emergency basis for 180 days, beginning March 31, 2003. During the 10-day comment period that was provided during that action, the following comments were raised:

i. EPA should reassess its burden estimates for developing emergency response plans;

ii. EPA should present total burden estimates in a clearer format;

iii. EPA should explain more clearly what is meant by a ''compliance review;''

iv. EPA should clarify the statutory deadlines for submitting emergency response plan certifications.

EPA has changed the information document that supports this Notice to explain more clearly what is meant by a vulnerability assessment ''compliance review'' and also to clarify the statutory deadlines for submitting emergency response plan certifications to EPA.

At this time, EPA would like to solicit comments to:

(i) 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;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information (especially pertaining to the development of emergency response plans), including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

*Burden Statement:* Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents or Affected Entities:* Community water systems serving populations greater than 3,300 persons.

*Estimated Number of Respondents:* 8,487 systems.

*Average Annual Reporting Burden:* 2,652,393 hours/year over a three-year period. This includes the burden required for all affected community water systems to conduct vulnerability assessments, prepare or update emergency response plans, and submit the required items to EPA. The total burden for these systems is 7,957,179 hours, which is largely concentrated in calendar years 2003 and 2004.

*Average burden per response:* 117.9 hours/response. This figure is an average that was calculated from burden estimates applicable to systems ranging in size from the smallest (serving 3,301 persons) up to the very largest (serving millions of persons). The burden hours vary widely, then, depending on system size, and the average burden figure should not be interpreted as applicable to all systems.

*Frequency of Response:* Varies based on statutory schedule and system size.

*Average Annual Cost:* $156,540,365; includes $82,211 O&M costs and $0 capital and startup costs.

Dated: May 13, 2003.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 03–12617 Filed 5–19–03; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7501–1]**

## Notice of Extension of Public Comment Period for Development of a National Agenda for the Environment and the Aging

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** In October 2002 EPA launched an Aging Initiative to study the effects of environmental health hazards on older persons and examine the impact that a rapidly aging population will have on the environment. The Initiative will also identify model programs that will provide opportunities for older persons to volunteer in their communities to reduce environmental hazards and protect the environment for future generations.

**DATES:** On March 4, 2003 (68 FR 10238) EPA published a notice seeking public comment on the National Agenda on the Environment and the Aging with a deadline of May 16, 2003. EPA has extended the deadline for public comments through Tuesday, September 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kathy Sykes, EPA's Aging Initiative Coordinator, at (202) 564–2188 or by email: *aging.info@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Identifying Research Gaps in Environmental Health

*Strategy To Address Environmental Hazards That Threaten the Health of Older Persons: Research and Educational Priorities*

The National Agenda for the Environment and the Aging will lay out a strategy that combines research and educational programs that promote preventive actions to address environmental health hazards. One fundamental question is: How do environmental hazards affect older persons differently from younger persons? Understanding the biology underlying differing age-related responses can inform a scientific rationale for decisions on how to appropriately incorporate the differential sensitivity of those who are aging into environmental risk assessment, decisions and actions.

EPA's effort to develop a national agenda to address environmental issues that affect the health and well-being of the nation's older persons has been advanced by a workshop on the ''Differential Susceptibility and Exposure of Older Persons to Environmental Hazards'' convened by the National Academy of Sciences in December 2002. At that meeting, experts discussed priority issues for the National Agenda for the Environment and the Aging. Experts focused on exposures to environmental hazards found in drinking water, indoor and outdoor air, and food residues that may have health effects including respiratory and cardiopulmonary disease, neurotoxicity, infectious disease and cancer.

EPA invites public comments on environmental hazards that may affect the health of older persons in states and local communities. Among questions which may be considered are:

What specific environmental exposures in your community particularly affect the health of older persons?

Which health conditions specific to older adults may increase their susceptibility to chemical toxicants?

Which lifestyle factors of older adults may increase the exposure to environmental hazards?

What steps may individuals and communities take to reduce the potential environmental health risks that older adults may face?

### II. Preparing for an Aging Society

*Impact of an Aging Population on the Environment*

The EPA invites comments on the extent to which an aging population may affect the environment. The nation's demographics will have changed dramatically by 2030: the U.S. population over 65 years of age is expected to double. The largest cohort born in U.S. history (76 million Americans were born between 1946 and 1964) begins to turn 65 in 2011 and will markedly influence the quality of life for both older persons and young people. The National Agenda will focus on the interface between older persons and their environment.

As an increasing number of adults approach retirement age, migration may substantially increase to areas characterized by temperate climates, lower population and traffic density, and better environmental quality. These areas may be sparsely populated and ecologically diverse regions. To ensure harmony between the needs of this growing population and preserving important natural resources, it is important to have the tools available for regional and landscape planning. The

EPA invites comments on the extent to which an aging population has unique needs with respect to housing, transportation, health care, recreation, and other quality of life issues, and how these needs may affect the environment. Issues which may be considered include:

What can city, county and regional planners do to meet the needs of today's older adults and prepare for the anticipated increase in the number of retirees and at the same time enhance preservation of natural resources for recreation, wildlife, water, air and land quality?

Can you identify unique resource needs and utilization patterns of older adults that may generate novel ecological pressures?

What steps can individual baby boomers and older adults take to not only reduce potential hazards to the environment but also preserve and enhance the quality of the environment for themselves and future generations?

## III. Encouraging Older Adults To Volunteer To Reduce Environmental Hazards

*Opportunities for Older Persons To Enhance the Environment and Their Health*

The National Agenda will not only identify strategies to protect the quality of life for older persons from environmental hazards, but also suggest ways to engage the nation's older persons in programs and strategies designed to enhance the environment for all generations.

Many older Americans contribute their time, energy and expertise to protect their environment and educate their communities about environmental hazards to citizens and threats to natural resources. The EPA intends to encourage further involvement and expand opportunities for older persons to volunteer in programs designed to lessen environmental hazards. Programs or activities that are of interest include activities that increase awareness of environmental hazards, and preserve the quality of the environment for today and tomorrow's citizens. The EPA welcomes comments on encouraging older adults to volunteer to reduce environmental hazards in their communities. Among the questions to which the EPA invites comments are the following:

Which volunteer programs that address environmental hazards in your community warrant examination for possible replication in other communities?

What incentives are needed to encourage older persons to volunteer their time and ideas to protect the environment, reduce environmental hazards and enhance the health of and the environment for people of all ages?

In an effort to raise awareness of environmental factors important to all citizens, how can older persons serve as models of good practice and mentors for younger generations about environmental hazards found in the community?

In your community or state, what intergenerational environmental projects have been successful in improving the health of children or older persons?

What potential barriers exist to volunteering in your community to reduce environmental hazards?

Public comments will be accepted until Tuesday, September 30, 2003.

(1) To submit written comments, please send them by mail or hand deliver to: EPA's Aging Initiative, Mail Code 1107A, 1200 Pennsylvania Avenue, NW., Room 2512 Ariel Rios North, Washington, DC 20460, or

(2) Fax comments to: National Agenda for the Environment and the Aging (202) 564–2733, or

(3) E-mail comments to: *aging.info@epa.gov.*

Dated: May 13, 2003.

**Joanne Rodman,**

*Acting Director, Office of Children's Health Protection.*

[FR Doc. 03–12618 Filed 5–19–03; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2002–0079; FRL–7306–2]**

## Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities, State of Mississippi Authorization of Lead-Based Paint Activities Program; Final Approval

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On January 21, 2003, the State of Mississippi submitted a self-certification letter stating that Mississippi's Lead-Based Paint Training and Certification Program meets the requirements for approval of a State program under section 404 of the Toxic Substances Control Act (TSCA) and that Mississippi has the legal authority and ability to implement the appropriate elements to run the program. The State program will administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of TSCA. Recent changes to the State's audit privilege and penalty mitigation statutes, which previously impaired the States's ability to fully administer and enforce the Lead-Based Paint Program, have resulted in the State program now providing adequate enforcement. This notice announces the authorization of the State of Mississippi's Lead-Based Program.

**DATES:** Lead-based paint activities program authorization was granted to the State of Mississippi effective on January 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Keith Bates, Pesticides and Toxic Substances Branch; Air, Pesticides and Toxics Management Division; Environmental Protection Agency; Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303; telephone number: (404) 562–8992; e-mail address: *bates.keith@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General

*A. Does this Action Apply to Me?*

This notice is directed to the public in general. This notice may, however, be of interest to firms and individuals engaged in lead-based paint activities in Mississippi. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by the notice. If you have any questions regarding the applicability of this notice 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 OPPT–2002–0079. 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 EPA Docket Center, Rm. B102-Reading

Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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.

## II. Background

### *A. What Action is the Agency Taking?*

The State of Mississippi has been operating its Lead-Based Paint Program under interim approval since June 28, 1999, with interim approval expiring on June 28, 2002. On December 17, 2001, the State of Mississippi submitted an application for EPA final approval of its Lead-Based Paint Program. Notice of Mississippi's December 17, 2001, application, a solicitation for public comment regarding the application, and background information supporting the application were published in the **Federal Register** on July 19, 2002 (67 FR 47541) (FRL–7187–5). No public comments were received regarding any aspect of Mississippi's application.

At the time of the December 2001 application, two deficiencies in the State's audit privilege and penalty mitigation statutes at Mississippi Code Annotated sections 49–2–71 and 49–17–43(g) impaired the State's ability to provide adequate enforcement in criminal proceedings and investigations and in assessment of appropriate penalties, thus preventing the Agency from fully approving the program. During the 2003 legislative session, however, the State amended the audit privilege and penalty mitigation statutes, which corrected the deficiencies identified by EPA. On January 21, 2003, the State of Mississippi supplemented its December 17, 2001, application with a discussion addressing how the amendments to Mississippi's audit privilege and penalty mitigation statutes, Mississippi Code Annotated sections 17–17–29, 49–2–71, 49–17–43, and 49–17–427, resulted in the State Lead-Based Paint Program providing adequate enforcement. The supplement also contained a statement certifying the Lead-Based Paint Program is at least as protective as the Federal program and provides adequate enforcement.

Based upon the State's certification, and EPA's review and assessment of Mississippi's complete application, Mississippi has successfully demonstrated that the State's Lead-Based Paint Program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Therefore, by this notice, EPA is announcing approval of the application and authorization of the State of Mississippi's Lead-Based Program, effective January 21, 2003.

### *B. What is the Agency's Authority for Taking this Action?*

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), titled *Lead Exposure Reduction*.

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

In the **Federal Register** of August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA (15 U.S.C. 2684(h)), EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized (15 U.S.C. 2684(a)). This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

## III. Federal Overfiling

Section 404(b) of TSCA, makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

## IV. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

## V. Congressional Review Act

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

States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: May 2, 2003.

**J. I. Palmer, Jr.,**

*Regional Administrator, Region IV.*

[FR Doc. 03–12628 Filed 5–19–03; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2003–0024; FRL–7309–4]**

## Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 7, 2003 to April 25, 2003, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the docket ID number OPPT–2003–0024 and the specific PMN number or TME number, must be received on or before June 19, 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:** Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. 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 OPPT–2003–0024. 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 EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

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 and specific PMN number or TME 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 OPPT–2003–0024. 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 *oppt.ncic@epa.gov,* Attention: Docket ID Number OPPT–2003–0024 and PMN Number or TME Number. 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: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0024 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

*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 technical 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. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from April 7, 2003 to April 25, 2003, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 47 PREMANUFACTURE NOTICES RECEIVED FROM: 04/07/03 TO 04/25/03

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–03–0469 | 04/07/03 | 07/06/03 | CBI | (S) Adhesive used in exterior finishes | (G) Vinyl ester acrylate copolymer |
| P–03–0470 | 04/07/03 | 07/06/03 | CBI | (G) Water-soluble packaging films (applies to both categories of use) | (G) Acrylic ester, polymer with ethenyl acetate, hydrolyzed, sodium salt |
| P–03–0471 | 04/07/03 | 07/06/03 | CBI | (G) Additive for industrial applications | (G) Bis oxetanyl ether |
| P–03–0472 | 04/09/03 | 07/08/03 | CBI | (G) Additive for coating formulations. | (G) Condensation polymer of anhydride and polyol. |
| P–03–0473 | 04/09/03 | 07/08/03 | CBI | (G) Additive for coating formulations. | (G) Condensation polymer of anhydride and polyol. |
| P–03–0474 | 04/09/03 | 07/08/03 | CBI | (G) Form control and wetting agent for waterborne coating, inks adhesive formulations | (G) Hydrophobically modified acetylenic glycol |
| P–03–0475 | 04/09/03 | 07/08/03 | Bedoukian Research, Inc. | (S) Chemical intermediate | (G) 2h-pyran-2-one, substituted |
| P–03–0476 | 04/10/03 | 07/09/03 | UCB Chemicals Corporation | (S) Resin for paints and coatings | (G) Hydroxyfunctional acrylic copolymer |
| P–03–0477 | 04/10/03 | 07/09/03 | UCB Chemicals Corporation | (S) Resins for paints and coatings | (G) Modified alkaline epoxy resin |
| P–03–0478 | 04/10/03 | 07/09/03 | CIBA Specialty Chemicals Corporation, Textile Effects | (S) Exhaust dyeing of polyester fibers; masterbatch for polymer incorporation | (G) Substituted-9, 10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound |
| P–03–0479 | 04/10/03 | 07/09/03 | CIBA Specialty Chemicals Corporation, Textile Effects | (S) Exhaust dyeing of polyester fibers; masterbatch for polymer incorporation | (G) Substituted-9, 10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound |
| P–03–0480 | 04/10/03 | 07/09/03 | CIBA Specialty Chemicals Corporation, Textile Effects | (S) Exhaust dyeing of polyester fibers; masterbatch for polymer incorporation | (G) Substituted-9, 10-dihydro-9,10-dioxo-anthracentyl-phenylhalo compound |
| P–03–0481 | 04/10/03 | 07/09/03 | ATK Thiokol Propulsion | (S) Explosives | (G) 5,2,6-(iminomethyenimino)-1h-imidazo[4,5-b]pyrazine, octahydro-1,3,4,7,8,10-hexanitro- |
| P–03–0482 | 04/11/03 | 07/10/03 | Cognis Corporation | (G) Lubricant | (S) Isooctanoic acid, 2-ethylhexyl ester* |
| P–03–0483 | 04/15/03 | 07/14/03 | CBI | (G) Unsaturated polyester resin | (G) Medium reactive dicyclopentadiene polyester resin |
| P–03–0484 | 04/14/03 | 07/13/03 | CBI | (S) Printing inks | (G) Fatty ester |
| P–03–0485 | 04/15/03 | 07/14/03 | Na Industries, Inc. | (S) Thickner for coatings | (G) Polymer with 2-methyl-2-propenoic acid,alkyl 2-propenoate and modified poly(oxyethylene) |
| P–03–0486 | 04/17/03 | 07/16/03 | CIBA Specialty Chemicals Corporation, Textile Effects | (S) Optical brightener additive for laundry detergent | (G) Sodium salt of a sulfonated triazine derivative |
| P–03–0487 | 04/16/03 | 07/15/03 | AOC, LLC | (S) Vinyl ester component for laminating fiberglass reinforced plastic parts | (S) 2-propenenitrile, polymer with 1,3-butadiene, 3-carboxy-1-cyano-1-methylpropyl-terminated, reaction products with 2,2′-[(1-methylethylidene)bis [(2,6-dibromo-4,1-phenylene)oxymethylene]] bis[oxirane]-4,4′(1-methylethylidene) bis[2,6-dibromophenol] polymer, dimethacrylates (esters) |
| P–03–0488 | 04/22/03 | 07/21/03 | CBI | (G) Unsaturated polyester resin | (G) Epoxy acrylate urethane modified polymer with maleic anhydrid |
| P–03–0489 | 04/16/03 | 07/15/03 | Dow Corning Corporation | (G) Treating agent | (G) Poly (dimethyl) siloxane |
| P–03–0490 | 04/16/03 | 07/15/03 | Dow Corning Corporation | (G) Treating agent | (G) Poly (dimethyl) siloxane |
| P–03–0491 | 04/16/03 | 07/15/03 | Dow Corning Corporation | (G) Treating agent | (G) Poly(dimethyl) siloxane |

I. 47 PREMANUFACTURE NOTICES RECEIVED FROM: 04/07/03 TO 04/25/03—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–03–0492 | 04/16/03 | 07/15/03 | Color Resources International, Co. | (S) Direct dye for paper color | (S) 2-naphthalenesulfonic acid, 3-[[4-[[4-(acetylamino)phenyl]azo-6-sulfo-1-naphthalenyl]azo]-6-[[2,4-diamino-5-sulfophenyl)azo]-4-hydroxy-, trisodium salt |
| P–03–0493 | 04/17/03 | 07/16/03 | CBI | (S) Binder/tackifier for inks | (G) Phenolic modified hydrocarbon resin |
| P–03–0494 | 04/17/03 | 07/16/03 | CBI | (S) Binder/tackifier for inks | (G) Phenolic modified hydrocarbon resin |
| P–03–0495 | 04/17/03 | 07/16/03 | CBI | (S) Binder/tackifier for inks | (G) Phenolic modified hydrocarbon resin |
| P–03–0496 | 04/17/03 | 07/16/03 | CBI | (S) Binder/tackifier for inks | (G) Phenolic modified hydrocarbon resin |
| P–03–0497 | 04/17/03 | 07/16/03 | CBI | (S) Binder/tackifier for inks | (G) Phenolic modified hydrocarbon resin |
| P–03–0498 | 04/17/03 | 07/16/03 | CBI | (S) Binder/tackifier for inks | (G) Phenolic modified hydrocarbon resin |
| P–03–0499 | 04/18/03 | 07/17/03 | CBI | (G) Moisture curing polyurethane adhesives | (G) Isocyanate terminated urethane polymer |
| P–03–0500 | 04/21/03 | 07/20/03 | 3M Company | (S) Fluoroelastomer for molded parts | (G) Fluoroelastomer |
| P–03–0501 | 04/23/03 | 07/22/03 | Forbo Adhesives, LLC | (G) Hot melt polyurethane adhesive | (G) Isocyanate functional polyester polyether urethane polymer |
| P–03–0502 | 04/23/03 | 07/22/03 | Zeon Chemicals L.P. | (S) Pressure sentive adhesives; hot melt; rubber compounds; road markings | (S) Benzene, ethenyl-, polymer with cyclopentene and 1,3-pentadien |
| P–03–0504 | 04/24/03 | 07/23/03 | CBI | (S) Ultraviolet (uv) absorber for engineering plastics - injection molding and extrusion; uv absorber for engineering plastics - for thermoplastic polyurethane | (S) Propanedioic acid, 2,2′-(1,4-phenylenedimethylidyne)bis-, tetraethyl ester |
| P–03–0505 | 04/22/03 | 07/21/03 | Degussa Corporation | (S) Fiberglass treatment | (S) Siloxanes and silicones, 3-[[2-[[[3(or4)-(ethenylpheny-l)methyl]amino]ethyl]amino]propyl methoxy, methoxy-terminated, hydrochlorides |
| P–03–0506 | 04/25/03 | 07/24/03 | CBI | (G) Intermediate | (G) Phosphate esters of acrylate |
| P–03–0507 | 04/24/03 | 07/23/03 | The Dow Chemical Company | (S) Chemical intermediate | (G) Cyclic nitrile |
| P–03–0508 | 04/25/03 | 07/24/03 | CBI | (G) Open, non-dispersive use. | (G) Water dispersible polyurethane |
| P–03–0509 | 04/25/03 | 07/24/03 | CBI | (G) Open, non-dispersive use. | (G) Water dispersive polyurethane |
| P–03–0510 | 04/25/03 | 07/24/03 | CBI | (G) Open, non-dispersive use. | (G) Water dispersible polyurethane |
| P–03–0511 | 04/25/03 | 07/24/03 | CBI | (G) Open, non-dispersive use. | (G) Water dispersive polyurethane |
| P–03–0512 | 04/25/03 | 07/24/03 | CBI | (G) Open, non-dispersive use. | (G) Water dispersive polyurethane |
| P–03–0513 | 04/25/03 | 07/24/03 | CBI | (G) Open, non-dispersive use. | (G) Water dispersible polyurethane |
| P–03–0514 | 04/24/03 | 07/23/03 | The Dow Chemical Company | (S) Chemical intermediate | (G) Cyclic nitrile aldehyde |
| P–03–0515 | 04/24/03 | 07/23/03 | The Dow Chemical Company | (S) Chemical intermediate | (G) Cyclic nitrile aldehyde |
| P–03–0516 | 04/24/03 | 07/23/03 | The Dow Chemical Company | (S) Chemical intermediate | (G) Cyclic nitrile aldehyde |
| P–03–0517 | 04/24/03 | 07/23/03 | The Dow Chemical Company | (S) Chemical intermediate | (G) Cyclic nitrile aldehyde |

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 2 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 04/07/03 TO 04/25/03

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| T–03–0002 | 04/24/03 | 07/23/03 | Forbo Adhesives, LLC | (G) Hot melt polyurethane adhesive | (G) Isocyanate functional polyester polyether urethane polymer |
| T–03–0003 | 04/24/03 | 07/23/03 | Forbo Adhesives, LLC | (G) Hot melt polyurethane adhesive | (G) Isocyanate functional polyester polyether |

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 28 NOTICES OF COMMENCEMENT FROM: 04/07/03 TO 04/25/03

| Case No. | Received Date | Commencement/ Import Date | Chemical |
|---|---|---|---|
| P–01–0287 | 04/21/03 | 04/02/03 | (S) Hexanoic acid, 3,5,5-trimethyl-, mixed tetraesters with 2-ethylhexanoic acid and pentaerythritol |
| P–01–0288 | 04/21/03 | 04/02/03 | (S) Isononanoic acid, mixed tetraesters with 2-ethylhexanoic acid and pentaerythritol |
| P–01–0289 | 04/21/03 | 04/02/03 | (S) Isononanoic acid, mixed tetraesters with 2-ethylhexanoic acid, pentaerythritol and 3,5,5-trimethylhexanoic |
| P–01–0762 | 04/16/03 | 03/28/03 | (S) 1,9-cyclohexadecadiene |
| P–01–0819 | 04/14/03 | 03/17/03 | (G) Alkane diols |
| P–01–0846 | 04/10/03 | 03/27/03 | (G) Aqueous polyurethane dispersion |
| P–02–0284 | 04/18/03 | 09/09/02 | (S) D-glucopyranose, oligomeric, branched undecyl glycosides |
| P–02–0373 | 04/10/03 | 03/29/03 | (G) Anthracene dyestuff |
| P–02–0647 | 04/22/03 | 03/28/03 | (G) Hydroxyl-terminated aliphatic polycarbonate |
| P–02–0885 | 04/23/03 | 03/22/03 | (G) Disubstituted cresol |
| P–02–0887 | 04/23/03 | 03/22/03 | (G) Phosphine oxide derivative |
| P–02–0897 | 04/10/03 | 03/27/03 | (G) Polyurethane |
| P–02–0959 | 04/23/03 | 04/08/03 | (G) Ethoxylate/urethane copolymer |
| P–02–0960 | 04/15/03 | 04/04/03 | (G) Metallic acrylate |
| P–03–0041 | 04/08/03 | 02/18/03 | (G) Alkyl silane methacrylate |
| P–03–0070 | 04/22/03 | 04/03/03 | (G) Organomodified siloxane |
| P–03–0119 | 04/18/03 | 04/04/03 | (G) Polyurethane resin |
| P–03–0120 | 04/08/03 | 04/02/03 | (G) Acrylic emulsion |
| P–03–0131 | 04/25/03 | 03/27/03 | (G) Polysilazane |
| P–03–0132 | 04/25/03 | 04/09/03 | (G) Polysilazane |
| P–03–0141 | 04/08/03 | 03/31/03 | (G) Alkyl ether |
| P–03–0155 | 04/16/03 | 04/11/03 | (G) Co-poly-2-methyl-1,5-pentane isophthalimide |
| P–03–0156 | 04/16/03 | 04/11/03 | (G) Co-poly-2-methyl-1,5-pentane isophthalimide |
| P–03–0157 | 04/16/03 | 04/11/03 | (G) Co-poly-2-methyl-1,5-pentane isophthalimide |
| P–03–0171 | 04/22/03 | 04/02/03 | (G) Epoxy-acrylic graft copolymer |
| P–03–0197 | 04/22/03 | 03/27/03 | (G) Polyoxyethylene polyalkylarylphenylether sulfate ammonium salt |
| P–03–0211 | 04/15/03 | 04/04/03 | (S) Siloxanes and silicones, methyl methoxy, polymers with methyl silsesquioxanes methoxy terminated, reaction products with methyl ethyl ketone 0,0′,0″-(methylsilylidyne)trioxime and 2,4,6-trimethyl-2,4,6-tris(3,3,3-trifluoropropyl)cyclotrisiloxane |
| P–03–0218 | 04/25/03 | 04/11/03 | (G) Alkyl borate |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: May 14, 2003.

**Sandra R. Wilkins,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 03–12619 Filed 5–19–03; 8:45 am]

BILLING CODE 6560–50–S

## EXPORT-IMPORT BANK

### Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

**SUMMARY:** The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

*Time and Place:* Tuesday, June 3, 2003, at 9:30 a.m. to 1 p.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

*Agenda:* Agenda items include reports and discussion on the Advisory Committee's Sub-Committees on services and agriculture and of the Annual Competitiveness Report.

*Public Participation:* The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 29, 2003, Teri Stumpf, Room 1203, 811 Vermont Avenue., NW., Washington, DC 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

**FOR FURTHER INFORMATION CONTACT:** Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

**Peter Saba,**

*General Counsel.*

[FR Doc. 03–12603 Filed 5–19–03; 8:45 am]

BILLING CODE 6690–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

May 8, 2003.

**SUMMARY:** The Federal Communications Commissions, 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, 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:** Written comments should be submitted on or before June 19, 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 comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0906.

*Title:* Annual DTV Report, FCC Form 317.

*Form Number:* FCC 317.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents:* 525.

*Estimated Time per Response:* 0.5–4.0 hours.

*Frequency of Response:* Recordkeeping; On occasion, annual, and license renewal reporting requirements.

*Total Annual Burden:* 1,150.

*Total Annual Costs:* $52,500.

*Needs and Uses:* The Commission has established a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television licensees in compliance with Section 336(e)(1) of the Telecommunications Act of 1996. On October 11, 2001, the Commission adopted a Report and Order, *In the Matter of Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees,* MM Docket No. 98–203, which extended this requirement to noncommercial educational television licensees. Licensees are required to report, using FCC 317, whether they provided ancillary or supplementary services, which services were provided, the services provided which are subject to a fee, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary service. This data are collected annually from digital television licensees. Licensees providing services subject to a fee will additionally be required annually to file FCC Form 159 (3060–0589) to remit the required fee. Each licensee is required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. The data are used by FCC staff to ensure that DTV licensees comply with the requirements of Section 336(e) of the Communications Act.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 03–12499 Filed 5–19–03; 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 June 3, 2003.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. Jasper Banking Company Employee Stock Ownership Plan*, Jasper, Georgia; to acquire voting shares, and James Hugh Bryan, Jasper, Georgia, as Trustee to retain shares ofJBC Bancshares, Inc., Jasper, Georgia, and thereby indirectly acquire voting shares of Jasper Banking Company, Jasper, Georgia.

Board of Governors of the Federal Reserve System, May 14, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–12502 Filed 5–19–03; 8:45 am]

BILLING CODE 6210–01–S

## 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 June 5, 2003.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. J. Reilly,* Glencoe, Illinois; to acquire voting shares of Hawthorn Corporation, Mundelein, Illinois, and thereby indirectly acquire Hawthorn Bank, Mundelein, Illinois.

Board of Governors of the Federal Reserve System, May 15, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–12654 Filed 5–19–03; 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 16, 2003.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Inwood Bancshares, Inc.,* Dallas, Texas, and Inwood Delaware, Inc., Dover, Delaware; to acquire 100 percent of WB&T Bancshares, Inc., Duncanville, Texas, and thereby indirectly acquire WB&T Delaware, Inc., Duncanville, Texas, and Western Bank & Trust, Duncanville, Texas.

Board of Governors of the Federal Reserve System, May 15, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–12655 Filed 5–19–03; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 2003.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Commerzbank Aktiengesellschaft*, Frankfurt, Germany; to engage *de novo* through its subsidiary, Commerzbank Capital Markets Corporation, New York, New York, in serving as the investment adviser to and the general partner or general member of, and holding and placing equity interest in, certain investment funds which invest only in securities and other assets which are permitted to be held directly under the Bank Holding Company Act (the ''BHC Act''), including acting as a commodity pool operator for private investment funds organized as commodity pools that invest in assets which a bank holding company is permitted to hold directly under the BHC Act, as permitted under Board precedent, *see First Security Corporation*, 85 Fed. Res. Bull. 207 (1999), *Dresdner Bank AG*, 84 Fed. Res. Bull. 361 (1998).

Board of Governors of the Federal Reserve System, May 14, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–12501 Filed 5–19–03; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–03–67]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

*Proposed Project:* Evaluating the Effectiveness of the Asthma Intervention Program, Power Breathing—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

**Background**

The Centers for Disease Control and Prevention (CDC) seeks to conduct an evaluation of the effectiveness of the asthma intervention program, Power Breathing, in two school districts in Kansas City, KS and Fredericksburg, VA. The overall aim of this program, developed by the Asthma and Allergy Foundation of America, is to provide adolescents with a basic understanding of asthma and its management in a peer-friendly environment and to empower them to take control of their asthma on a personal level. The proposed data collection for the evaluation will provide feedback to CDC about the

usefulness and cost-effectiveness of this teen asthma intervention program. Sample participants will come from students, parents, program facilitators, and school personnel (school nurses and teachers) in the selected two school districts. Self-administered questionnaires will be given to students at baseline (pre-intervention program), immediately post-program, and at 6-months post-program, while parents receive baseline and 6-month post-program surveys. The student survey will focus on: knowledge, attitudes, and behaviors regarding their asthma; perception of their health status and quality of life; assessment of the program; and impact of the program on their asthma management skills. Parents will be asked about their child's asthma condition, assessment of the program, and cost-related issues for their child's asthma. Individual, one-time interviews will be conducted with program facilitators and school personnel regarding their perceptions of the intervention program and its impact on the students. Two focus groups will be conducted with students post-program to obtain additional, in-depth information about their perceptions of the program.

| Respondents | Number of respondents | Number of responses/ respondent | Average burden/ response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|
| Students: | | | | |
| Baseline | 524 | 1 | 30/60 | 262 |
| Post-program | 524 | 1 | 15/60 | 131 |
| 6-month follow-up | 524 | 1 | 30/60 | 262 |
| Focus group | 16 | 1 | 1 | 16 |
| Parents: | | | | |
| Baseline | 524 | 1 | 10/60 | 87 |
| 6-month follow-up | 524 | 1 | 15/60 | 131 |
| Program facilitators: | | | | |
| Interview | 6 | 1 | 40/60 | 4 |
| Program sessions | 6 | 12 | 30/60 | 36 |
| School nurses: | | | | |
| School profile | 6 | 1 | 10/60 | 1 |
| Record abstraction | 6 | 87 | 10/60 | 87 |
| Interview | 6 | 1 | 40/60 | 4 |
| Teachers Interview | 12 | 1 | 40/60 | 8 |
| Total | | | | 1029 |

Dated: May 13, 2003.

**Thomas Bartenfeld,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–12535 Filed 5–19–03; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Endocrinologic and Metabolic Drugs Advisory Committee; Amendment of Notice

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of the meeting of the Endocrinologic and Metabolic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of May 6, 2003 (68 FR 24003). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

**FOR FURTHER INFORMATION CONTACT:** Dornette Spell-LeSane, 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, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 6, 2003 (68 FR 24003), FDA announced that a meeting of the Endocrinologic and Metabolic Drugs Advisory Committee would be held on June 10, 2003. On page 24003, in the third column, the *Agenda* portion of the meeting is amended to read as follows:

*Agenda*: The committee will discuss supplemental new drug application (sNDA) 19–604/S–033 HUMATROPE (somatropin recombinant deoxyribonucleic acid (rDNA) origin) for injection), Eli Lilly and Co., for the proposed indication of treatment of nongrowth hormone deficiency short stature.

The notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 13, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–12544 Filed 5–19–03; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Obstetrics and Gynecology Devices Panel of the Medical Devices 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). At least one portion of the meeting will be closed to the public.

*Name of the Committee*: Obstetrics and Gynecology Devices Panel of the Medical Devices 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 9, 2003, from 12:30 p.m.

to 5 p.m. and June 10, 2003, from 8:30 a.m. to 4:30 p.m.

*Location*: Hilton DC North—Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

*Contact*: Joyce M. Whang, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12524. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On June 9, 2003, the committee will hear a presentation on post-approval studies and adverse events related to an intrapartum fetal pulse oximeter. On June 10, 2003, the committee will discuss, make recommendations, and vote on a premarket approval application for an endometrial ablation device. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html.* Material for the June 9, 2003, session will be posted on June 6, 2003. Material for the June 10, 2003, session will be posted on June 9, 2003.

*Procedure*: On June 9, 2003, from 2:30 p.m. to 5 p.m. and on June 10, 2003, from 8:30 a.m. to 4:30 p.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 May 30, 2003. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. on June 9, 2003, and between approximately 8:45 a.m. and 9:15 a.m. and 3 p.m. and 3:30 p.m. on June 10, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 30, 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 9, 2003, from 12:30 p.m. to 2:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) presented by a sponsor.

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 AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, 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 13, 2003.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 03–12678 Filed 5–19–03; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99D–0674]**

### Guidance for Industry on INDs for Phase 2 and Phase 3 Studies; Chemistry, Manufacturing, and Controls Information; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''INDs for Phase 2 and Phase 3 Studies; Chemistry, Manufacturing, and Controls Information.'' This guidance is intended to provide recommendations to sponsors of investigational new drug applications (INDs) on the chemistry, manufacturing, and controls documentation (CMC), including microbiology documentation, that should be submitted for phase 2 and 3 studies conducted under INDs. The guidance applies to human drugs (as defined in the Federal Food, Drug, and Cosmetic Act). The guidance does not apply to botanical drug products, protein drugs derived from natural sources or produced by the use of biotechnology, or other biologics.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance 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. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Charles Hoiberg, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA is announcing the availability of a guidance for industry entitled ''INDs for Phase 2 and Phase 3 Studies; Chemistry, Manufacturing, and Controls Information.'' The guidance is intended to: (1) Ensure that sufficient data will be submitted to the agency to assess from the CMC perspective the safety and quality of the proposed clinical studies; (2) expedite the entry of new drugs into the marketplace by clarifying the type, extent, and reporting of CMC information for phase 2 and 3 studies; and (3) facilitate drug discovery and development.

In the **Federal Register** of April 21, 1999 (64 FR 19543), FDA announced the availability of a draft version of this guidance entitled ''INDs for Phase 2 and 3 Studies of Drugs, Including Specified Therapeutic Biotechnology-Derived Products; Chemistry, Manufacturing, and Controls Content and Format.'' The April 1999 guidance gave interested persons an opportunity to submit comments through July 20, 1999. All comments received during the comment period have been carefully reviewed and, where appropriate, incorporated in the guidance. The format of the guidance has been reorganized to include the relevant headings and to follow the order recommended for an application submitted in the ''Common Technical Document: Quality'' format (see the Quality section of the guidance entitled ''M4 Organization of the Common Technical Document for the Registration of Pharmaceuticals for Human Use'' that FDA announced in the **Federal Register** on October 16, 2001 (66 FR 52634)). Additional information has been included to explain the difference between CMC safety information, which should be submitted in an information amendment, and corroborating information that can be submitted in an

annual report. As a result of the public comments and editorial changes, the guidance is clearer and more concise than the draft version. Furthermore, the scope of the guidance has been changed to exclude proteins and biologics. The agency is considering developing a separate guidance on INDs for these types of drugs.

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB Control No. 0910–0014.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on CMC content and format of INDs for phase 2 and 3 studies of certain drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance. 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. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: May 13, 2003.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 03–12545 Filed 5–19–03; 8:45 am]

**BILLING CODE 4160–01–S**

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

## Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506 (c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act and Minority AIDS Initiative (MAI) Survey: New**

The purpose of the Ryan White CARE Act is to provide emergency assistance to localities that are disproportionately affected by the human immunodeficiency virus (HIV) epidemic and to make financial assistance available for the development, organization, coordination, and operation of more effective and cost-efficient systems for the delivery of essential services to persons with HIV disease. The CARE Act also provides grants to States, eligible metropolitan areas, community-based programs, and early intervention programs for the delivery of services to individuals and families with HIV infection.

The HRSA's HIV/AIDS Bureau (HAB) administers Titles I, II, III, and IV of the Ryan White CARE Act of 1990, as amended by the Ryan White CARE Act Amendments of 1996 and 2000 (codified under Title XXVI of the Public Health Service Act).

In 1998, President Clinton declared that HIV was a severe and ongoing health crisis among racial/ethnic minority communities. In response to the President's declaration, in fiscal year 1999 the Congressional Black Caucus (CBC) announced funding of a new initiative to address the disproportionate impact of HIV on African-American and Hispanic communities. Since 1999, the initial CBC initiative has been broadened to address the HIV epidemic in other racial and ethnic minority communities. Currently, the HRSA, the Centers for Disease Control and Prevention, the National Institutes of Health, the Office of Public Health and Sciences' Office of Minority Health, the Indian Health Service, and the Substance Abuse and Mental Health Services Administration allocate MAI funds. Direct service providers receiving MAI funds through HAB include organizations whose board of directors and/or direct service employees are racial/ethnic minorities, as well as organizations whose mission is focused on providing care to racial/ethnic minority populations.

The Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds is designed to collect information from (1) service providers receiving MAI funds and (2) service providers funded by the Ryan White CARE Act whose board members or direct service staff are predominantly racial/ethnic minority members.

The Fax Consultation Form will address several over-arching questions including: (1) Have the MAI funds increased the number of persons served and the type and availability of services provided in communities of color; (2) have the MAI funds increased the capacity of minority and other CARE Act service providers to provide care and services in communities of color; (3) what has been the impact of MAI funded training, technical assistance (TA), and capacity building of minority and other organizations; and (4) what administrative impact have MAI funds had on CARE Act programs? Information obtained from the Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds will be used to address the over-arching questions, plan new technical assistance and capacity development activities, and inform HAB policies and program management.

The Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds will be transmitted by facsimile to service

providers who meet the criteria for participating in the survey. Responding service providers will return their completed forms by the United States Postal Service, an Internet web-based response form, or by facsimile. The form will be designed to include check box responses and open-ended questions. The form will not require additional data to be collected or analyzed by the responding provider. The form will take no longer than 20 minutes to complete. The form will include questions regarding facilitators and barriers to CARE Act and MAI funding, training and technical assistance needs, ways in which the number of minority service providers engaged in HIV care might be increased, new and expanded activities funded by MAI, extent to which MAI funds have met the needs of racial/ethnic communities, the impact of MAI funds on the administration activities, and methods used to track MAI funds.

The estimated response burden for service providers is as follows:

| Estimated number of provider respondents | Estimated responses per provider | Estimated minutes per response | Estimated total minutes burden | Estimated total hour burden |
|---|---|---|---|---|
| 1,500 | 1 | 20 | 30,000 | 500 |

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 day of this notice.

Dated: May 13, 2003.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 03–12546 Filed 5–19–03; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Health

**[OMB #0925–0479]**

### Proposed collection; Comment Request; Evaluation of the NIDCD Partnership Program

**SUMMARY:** In compliance with the requirement of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Deafness and Other Communication Disorders (NIDCD), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**Proposed Collection**

*Title:* Evaluation of the NIDCD Partnership Program.

*Type of Information Collection Request:* Extension.

*Need and Use of Information Collection:* The NIDCD was established to support biomedical and behavioral research and research training in hearing, smell, balance, taste, voice, speech and language. Although minorities and women will dominate the work force within the next decade, both groups are under represented in the science and health professional field. Because of this concern, the NIDCD, with assistance from the Office of Research on Minority Health, established the Partnership Program in 1994 to increase the number of minority scientists and health care professionals doing research on communication and communication disorders. The proposed survey will yield data about: (1) Reasons for participation in the program; (2) satisfaction of participants with the program and (3) how participation in the program has lead to the pursuit of a career in the health field. This survey will track the Partnership Program's success at increasing the number of women and minorities who are scientists.

*Frequency of Response:* One.

*Affected Public:* Individuals.

*Type of Respondent:* Partnership Program Participants and Applicants. The annual reporting burden is as follows:

*Estimated Number of Respondents:* 51;

*Estimated Number of Responses per Respondent:* 1;

*Average Burden Hours Per Response:* 30; and *Estimated Total Annual Burden Hours Requested:* 18.

The annualized cost to respondents is estimated at: $288. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**(Note:** The following table is acceptable for the Respondent and Burden Estimate Information, if appropriate, instead of the text as shown above.)

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| New program participants | 7 | 1 | .30 | 3.5 |
| Past program participants | 14 | 1 | .30 | 7 |
| Program applicants | 30 | 1 | .25 | 7.5 |
| Total | 51 | | | 18 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for fulfillment of the NIDCD mission, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed data collection, including the variety of the methodology; (3) ways to enhance the quality, utility, and clarity of the data collection and (4) ways to minimize the burden of the collection of information on the respondents, including appropriate use of automated collection techniques and information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of

Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mrs. Kay C. Johnson-Graham, EEO Officer, Office of Equal Employment Opportunity, NIDCD, NIH, Building 31, Room 3C08, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number 301–402–6415 or E-mail your request, including your address to: *kay\johnson@ms.nidcd.nih.gov*.

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: May 15, 2003.

**W. David Kerr,**

*Executive Officer, NIDCD, National Institutes of Health.*

[FR Doc. 03–12662 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; Ethical Problems Encountered by Registered Nurses and Social Workers: Implications for Job Satisfaction and Retention

**SUMMARY:** Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collected listed below. This proposed information collection was previously published in the **Federal Register** on January 16, 2003, page 2341 and allowed 60 days for public comment. Public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Proposed Collection**

*Title:* The Ethical Problems Encountered by Nurses and Social Workers: Implications for Job Satisfaction and Retention.

*Type of Information Collection Request:* New.

*Need and Use of Information Collected:* The purposes of the study are (1) To identify common ethical problems experienced by nurses and social workers in health care settings; (2) to identify the relationships between selected individual and organizational factors and perceptions of ethics stress, job satisfaction, and retention; and (3) to identify the availability of ethics support services. The findings will provide valuable information concerning: (1) The extent to which ethical problems and stress are contributing to a shortage of health care providers; (2) the importance of ethics related content in nurses' and social workers' education; and (3) the importance of ethics support services.

*Frequency of Response:* Once.

*Affected Public:* Individuals; Academic Institutions; Business or for-profit; Not-for-profit organizations.

*Type of Respondents:* Registered Nurses and Social Workers. The annual reporting burden is as follows:

*Estimated Number of Respondents:* 3000;

*Estimated Number of Responses per Respondent:* 1;

*Average Burden Hours Per Response:* .33; and

*Estimated Total Annual Burden Hours Requested:* 990.

The annualized cost to respondents is estimated at: $75,000. There are not Capital Costs to report. There are no Operating or Maintenance Costs to report.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Connie Ulrich, RN, PhD., Principal Investigator, Department of Clinical Bioethics, Warrent G. Magnuson Clinical Center, Building 10, Room 1C118, Bethesda, MD 20892, or call non-toll-free number (301) 451–8338 or E-mail your request, including your address to *culrich@cc.nih.gov.*

*Requested for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 12, 2003.

**David K. Henderson**

*Deputy Director, Warrent G. Magnuson Clinical Center, National Institutes of Health.*

**Ezekiel J. Emanual**

*Director, Department of Clinical Bioethics, Warren G. Magnuson Clinical Center, National Institutes of Health.*

[FR Doc. 03–12663 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council.

*Date:* June 11–12, 2003.

*Open:* June 11, 2003, 8:30 a.m. to 1:30 p.m.

*Agenda:* To present the Director's Report and other scientific presentations.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

*Closed:* June 12, 2003, 9:45 a.m. to 10:15 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

*Open:* June 12, 2003, 10:15 a.m. to 12:00 p.m.

*Agenda:* Continuation of the Director's Report and other scientific presentations.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

*Contact Person:* Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, (301)–594–8834, *hammond@extra.niddk.nih.gov.*

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

*Date:* June 11–12, 2003.

*Open:* June 11, 2003, 1:30 p.m. to 4:00 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

*Closed:* June 11, 2003, 4:00 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

*Closed:* June 12, 2003, 8 a.m. to 8:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

*Open:* June 12, 2003, 8:30 a.m. to 9:30 a.m.

*Agenda:* Continuation of the review of the Division's scientific and planning activities.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

*Contact Person:* Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452. (301) 594–8834, *hammondr@extra.niddk.nih.gov.*

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

*Date:* June 11–12, 2003.

*Open:* June 11, 2003, 1:30 p.m. to 3 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

*Closed:* June 11, 2003, 3:15 p.m. to 5:15 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

*Open:* June 12, 2003, 8 a.m. to 9:30 a.m.

*Agenda:* Continuation of the review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

*Contact Person:* Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452. (301) 594–8834, *hammondr@extra.niddk.nih.gov.*

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic, and Hematologic Diseases Subcommittee.

*Date:* June 11–12, 2003.

*Open:* June 11, 2003, 1:30 p.m. to 5:30 p.m.

*Agenda:* To review the Division's scientific and planning activities.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

*Closed:* June 12, 2003, 8 a.m. to 9:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

*Contact Person:* Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, (301) 594–8834, *hammondr@extra.niddk.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 13, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–12656 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee B.

*Date:* June 12, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 13, 2003.

**LaVerne Y. Springfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–12657 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel Activin and Inhibin Signaling and Reproduction.

*Date:* June 10, 2003.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd, Room 5E03, Bethesda, MD 20892, 301–435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 13, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–12658 Filed 5–19–02; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions seat forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

*Name of Committee:* National Institute of General Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

*Date:* June 11, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Four Points by Sheraton, 8400 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 13, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–12659 Filed 5–19–03; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 ICP–3 AIDS International Collaborative Programs.

*Date:* June 2–3, 2003.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Hilary Sigmon, PhD, RN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive 2, RM 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

*Name of Committee:* Cardiovascular Sciences Integrated Review Group, Pathology A Study Section.

*Date:* June 3–4, 2003.

*Time:* 8:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

*Name of Committee:* Oncological Sciences Integrated Review Group, Pathology B Study Section.

*Date:* June 3–6, 2003.

*Time:* 6 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 ELB(30)I:RR–03–002: NCRR Shared Instrumentation Grant.

*Date:* June 4–5, 2003.

*Time:* 8:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, (301) 435–1777, *friedj@csr.nih.gov.*

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 1.

*Date:* June 5–6, 2003.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@drg.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Aging, Neuroimaging and Cognition.

*Date:* June 5, 2003.

*Time:* 12 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Dana Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1856, *pluded@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306; 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 13, 2003.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 03–12660 Filed 5–19–03; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1466–DR]**

### Alabama; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1466-DR), dated May 12, 2003, and related determinations.

**EFFECTIVE DATE:** May 12, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 12, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe storms, tornadoes, and flooding on May 5, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Direct Federal Assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, direct Federal assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Gracia Szczech, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Bibb, Blount, Calhoun, Cullman, DeKalb, Etowah, Jackson, Jefferson, Madison, Marshall, Morgan, Shelby, St. Clair, Talladega, Tuscaloosa, and Walker Counties for Individual Assistance.

DeKalb, Jackson, Limestone, and Madison Counties for Public Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–12587 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1466–DR]**

### Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Alabama, (FEMA–1466–DR), dated May 12, 2003, and related determinations.

**EFFECTIVE DATE:** May 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 2003:

Barbour, Bullock, Chambers, Cherokee, Clay, Cleburne, Colbert, Coosa, Lauderdale, Lawrence, Lee, Macon, Randolph, Russell, and Tallapoosa Counties for Individual Assistance.

Limestone County for Individual Assistance (already designated for Public Assistance).

Jefferson, Marshall, St. Clair, and Talladega Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-

Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–12588 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1462–DR]**

### Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Kansas, (FEMA–1462–DR), dated May 6, 2003, and related determinations.

**EFFECTIVE DATE:** May 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Kansas is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Cherokee, Crawford, Labette, Neosho and Wyandotte for Categories C through G under the Public Assistance program (already designated for Individual Assistance, debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Undersecretary, Emergency Preparedness and Response.*

[FR Doc. 03–12583 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1449–DR]**

### Federated States of Micronesia; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Federated States of Micronesia (FEMA–1449–DR), dated January 6, 2003, and related determinations.

**EFFECTIVE DATE:** May 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Federated States of Micronesia is hereby amended to include the Hazard Mitigation Grant Program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 6, 2003:

Chuuk, Kosrae, Pohnpei and Yap States are eligible to apply for assistance under the Hazard Mitigation Grant program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Undersecretary, Emergency Preparedness and Response.*

[FR Doc. 03–12582 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1463–DR]**

### Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1463–DR), dated May 6, 2003, and related determinations.

**EFFECTIVE DATE:** May 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2003:

Bollinger, Cape Girardeau, Franklin, Jefferson, Perry, Saint Francois, Sainte Genevieve, Saint Louis, Scott, Stoddard, Washington Counties for Individual Assistance.

Cape Girardeau and Jefferson Counties for debris removal (Cateogry A) and emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Undersecretary, Emergency Preparedness and Response.*

[FR Doc. 03–12584 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1467–DR]**

### New York; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1467–DR), dated May 12, 2003, and related determinations.

**EFFECTIVE DATE:** May 12, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 12, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from an ice storm on April 3–5, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Marianne Jackson, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Cayuga, Monroe, Oneida, Onondaga, Ontario, Oswego, Seneca, and Wayne Counties for Individual Assistance.

Cayuga, Chenango, Monroe, Oneida, Onondaga, Ontario, Oswego, Wayne, and Yates Counties for Public Assistance.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response.*

[FR Doc. 03–12589 Filed 5–19–03; 8:45 am]

BILLING CODE 6718–02–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1465–DR]**

### Oklahoma; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1465–DR), dated May 10, 2003, and related determinations.

**EFFECTIVE DATES:** May 10, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 10, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oklahoma, resulting from severe storms and tornadoes on May 8, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Undersecretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justin DeMello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster:

Canadian, Cleveland, Grady, Kingfisher, Lincoln, Logan, McClain, Oklahoma, and Pottawatomie Counties for Individual Assistance.

Cleveland and Oklahoma Counties for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Undersecretary, Emergency Preparedness and Response.*

[FR Doc. 03–12586 Filed 5–19–03; 8:45 am]

**BILLING CODE 6718–02–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1464–DR]**

### Tennessee; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1464-DR), dated May 8, 2003, and related determinations.

**EFFECTIVE DATE:** May 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 8, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms, tornadoes, and flooding on May 4, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Undersecretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael E. Bloch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Carroll, Cheatham, Chester, Crockett, Dickson, Dyer, Gibson, Hardeman, Haywood, Henderson, Henry, Houston, Lake, Lauderdale, Madison, Montgomery, Obion, Robertson, Stewart, and Weakley Counties for Individual Assistance.

Dyer, Madison, Montgomery, and Weakley Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Undersecretary, Emergency Preparedness and Response.*

[FR Doc. 03–12585 Filed 5–19–03; 8:45 am]

**BILLING CODE 6718–02–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### St. Catherine Creek National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Notice of intent to prepare a comprehensive conservation plan and environmental assessment for St. Catherine Creek National Wildlife Refuge, located in Adams County, Mississippi.

**SUMMARY:** This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National 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 the scope of issues to include in the environmental document.

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: Laura King, Natural Resource Planner, Central Mississippi National Wildlife Refuge Complex, 728 Yazoo Refuge Road, Hollandale, Mississippi 38748; Telephone 662–839–2638; E-Mail *Laura_King@fws.gov.* Additional information concerning this refuge may be found at the Service's Internet site *http://www.fws.gov.*

**SUPPLEMENTARY INFORMATION:** By 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 purposes. 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.

St. Catherine Creek National Wildlife Refuge was established in January 1990, to preserve, improve, and create habitat for waterfowl. The refuge encompasses 24,125 acres and is located in the western section of Adams County in southwest Mississippi, 7 miles south of Natchez, Mississippi. The western boundary of the refuge is the Mississippi River with the eastern boundary following the bluffs and the southern boundary, the Homochitto River.

**Authority:** This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105–57.

Dated: May 3, 2003.

**J. Mitch King,**

*Acting Regional Director.*

[FR Doc. 03–12536 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of the Final Comprehensive Conservation Plans for the Five Refuges in the Rhode Island National Wildlife Refuge Complex

**AGENCY:** U.S. Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces that final comprehensive conservation plans (CCP) are available for each of the five refuges in the Rhode Island National Wildlife Refuge (NWR) Complex: Trustom Pond NWR, Block Island NWR, Sachuest Point NWR, Ninigret NWR, and John H. Chafee NWR at Pettaquamscutt Cove. These CCPs, prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 6688dd *et seq.*), and the National Environmental Policy Act of 1969, describe how the Service intends to manage these refuges over the next 15 years.

**ADDRESSES:** Copies of the CCPs are available on compact diskette or hard copy, and can be obtained by writing: Rhode Island NWR Complex, 3769D Old Post Road, Charlestown, Rhode Island, 02813, 401–364–9124. Copies of the CCPs can also be accessed and downloaded at the following Web site address: *http://northeast.fws.gov/planning.*

**FOR FURTHER INFORMATION CONTACT:** Charlie Vandemoer, Refuge Manager, at the address above, or Nancy McGarigal, Planning Team Leader, U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, Massachusetts, 01035, (413) 253–8562.

**SUPPLEMENTARY INFORMATION:** A CCP is required by the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 6688dd *et seq.*). The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. These CCPs will be reviewed and updated at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 6688dd *et seq.*), and the National Environmental Policy Act of 1969.

Dated: September 9, 2002.

**Dr. Mamie A. Parker,**

*Regional Director, U.S. Fish and Wildlife Service.*

**Note:** This document was received at the Office of the Federal Register on May 15, 2003.

[FR Doc. 03–12630 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–962–1410–HY–P; AA–6649–C, ALA–2]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Atxam Corporation for lands in T. 52 S., R. 73 W., and T. 53 S., R. 79 W., Seward Meridian, Alaska, located in the vicinity of Atka, Alaska, aggregating approximately 42 acres. Notice of this decision will also be published four times in the Anchorage Daily News.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 19, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** Barbara Waldal, by phone at (907) 271–5669, or by e-mail at *barbara_waldal@ak.blm.gov.*

**Barbara Opp Waldal,**

*Land Law Examiner, Branch of ANCSA Adjudication.*

[FR Doc. 03–12511 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–650–01–1220–JG–O64B]**

### Closure Order for Motorized Vehicle Use, Furnace Creek Canyon Road, Mono County, California

**AGENCY:** Bureau of Land Management, United States Department of the Interior.

**ACTION:** Notice of vehicle closure in Furnace Creek Canyon, White Mountains, Mono County, California.

**SUMMARY:** Notice is hereby given that the route through Furnace Creek Canyon is closed to motorized vehicle use.

*Order:* The public lands, located to the southwest from a point near the mouth of Furnace Creek canyon approximately 1.25 miles below the U.S. Forest Service boundary and 2.5 miles from HWY 264, are closed to the use of

motorized or off-road vehicles. No person may use, drive, transport, park, let stand, or have charge or control over any motorized vehicle in the area located east of the closure signs and locked gate. Exemptions to this order may be granted to law enforcement and other emergency vehicles in the course of official duties and for other approved administrative activities performed by the Bureau of Land Management or U.S. Forest Service. Exemptions may also be granted to those persons involved with ranching activities associated with the Whitewolf Grazing Allotment.

**EFFECTIVE DATE:** This closure became effective Friday, March 7, 2003. The closure will remain in effect unless rescinded by the authorizing official. The permanent decision regarding motorized or off-road vehicle use in Furnace Creek will be determined through an amendment of the California Desert Conservation Area Plan, which is expected to occur by June 30, 2004. BLM will implement the purposed action soon after the effective closure date of March 7, 2003 without prior notice and opportunity for public comment because of the imminent need for regulatory authority to prevent damage to wetland and riparian resources.

**FOR FURTHER INFORMATION CONTACT:** Field Office Manager, Bureau of Land Management, Ridgecrest Field Office, 300 South Richmond Road, Ridgecrest CA 93555, (760) 384–5400.

**SUPPLEMENTARY INFORMATION:** The BLM has established national standards for the management and protection of riparian and wetland habitat on the Public Lands. Monitoring conducted during November 2002 and February 2003 indicates that the Furnace Creek fluvial system is not meeting the BLM's standards for a properly functioning riparian system. presently, portions of the Furnace Creek drainage are considered ''functional-at risk''. Riparian-wetland areas are considered ''functional-at risk'' when an existing soil, water, or vegetation condition makes them susceptible to degradation. Presently, there are seven locations in Furnace Creek where the existing vehicle route crosses the stream. Significant erosion and sedimentation of the stream are occurring at two stream crossings. Erosion in both locations is contributing excessive sediment to the adjacent riparian area. moreover, head-cutting is forming at both locations. Head-cuts are a fluvial geomorphic feature indicative of unstable conditions. The proposed closure order is consistent with protecting and restoring Furnace Creek to a properly functioning riparian system.

Bureau of Land Management's regulatory policy concerning the use of off-road vehicles on public lands is found in 43 CFR 8341. Whenever the authorized officer determines that OHV use will cause or is causing considerable adverse effects on resources (soil, vegetation, wildlife habitat, cultural, historic, scenic, recreation, or other resources), the area must be immediately closed to the type of use causing the adverse effects. The closure must remain in force only until the adverse effects are eliminated and measures to prevent their recurrency have been implemented (whichever occurs first). A considerable adverse environmental effect resulting from the use of off-road vehicles is defined in 43 CFR part 8341 as any environmental impact that causes:

(a) Significant damage to cultural or natural resources, including but not limited to historic, archaeological, soil, water, air, vegetation, scenic values; or

(b) Significant harassment of wildlife and/or significant disruption of wildlife habitats; . . . and is irreparable due to the impossibility or impracticality of performing corrective or remedial action.

Furnace Creek canyon will remain open for human use that does not entail the use of a motorized vehicle within the area closed by this order. Maps depicting the affected area are available by contacting the Ridgecrest Field Office, California Desert Conservation Area, Ridgecrest, CA. A gate will be erected at the closure points and the affected area will be posted with public notices and standard motorized vehicle closure signs.

Authority for this closure is found in 43 CFR 8364.1. Violations of this order may be subject to the penalties provided according to 43 CFR 8360.0–7.

Dated: March 11, 2003.

**Hector A. Villalobos,**

*Ridgecrest Field Manager.*

[FR Doc. 03–12522 Filed 5–19–03; 8:45 am]

**BILLING CODE 4310–AG–M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–076–1220–BA]**

### Notice of Closure to Off-highway Vehicle Use

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure to off-highway vehicle use.

**SUMMARY:** With the publication of this notice, all existing trails and cross-country travel on certain lands administered by the Bureau of Land Management (BLM) Shoshone Field Office are closed to off-highway vehicle (OHV) use. The closure will remain in effect until the proposed Resource Management Plan (FY2005) can implement OHV designations, or until such time as the authorized officer of the Shoshone Field Office determines the closure may be lifted. The closure is in accordance with 43 CFR 9268.3(d)(1)(i–iii) and 43 CFR 8341.1(f)(4).

**FOR FURTHER INFORMATION CONTACT:** John Kurtz, Outdoor Recreation Planner, (208) 732–7296, BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352.

**SUPPLEMENTARY INFORMATION:** The Blaine County Muldoon Summit Road dips where it passes through Bureau of Land Management administered land, resulting in limited visibility for ¼ of a mile causing public safety issues. Within this section, All Terrain Vehicles (ATV), motorcycles and snowmobiles cross the county road to gain momentum to hill climb. These vehicles are climbing steep slopes resulting in ruts, vegetation damage, noxious weed spread and erosion. The vertical trails also cause visual scars for the surrounding residents and communities. These lands are also important winter wildlife habitat areas. This closure will protect these resources and reduce the potential for further noxious weed invasion. Private landowners adjacent to the lands have complained about the resource damage. This closure is in response to those complaints.

The area of closure includes BLM lands, specifically described wholly or partially:

**Boise Meridian**

T. 2 N., R. 19 E., Sec.31, N½NW¼ (80 Acres).

Detailed maps of the area closed to OHV and recreational use are available at the BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352.

Dated: April 3, 2003.

**Rick VanderVoet,**

*Acting Shoshone Field Manager.*

[FR Doc. 03–12516 Filed 5–19–03; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–010–1430–FM; N–74293]**

### Termination of Segregation, Exchange N–74293; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of termination of segregation.

**SUMMARY:** This action terminates a portion of the segregation of the Exchange Proposal N–74293 initiated by Nevada Land and Resource Company, LLC. The land will be opened to the operation of the public land laws, including location and entry under the mining laws.

**EFFECTIVE DATE:** July 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Helen Hankins, Elko Field Office, 3900 E. Idaho St., Elko, Nevada 89801, 775–753–0200.

**SUPPLEMENTARY INFORMATION:** On May 4, 2001, the land described below was segregated as to a proposed exchange with Nevada Land and Resource Company, LLC. The exchange is no longer being pursued on the following lands identified below.

The segregative effect is hereby terminated for the following described land:

**Mount Diablo Meridian, Nevada**

T. 33 N., R. 45 E.,
Section 24, All
Section 26, All

The area described contains 1,280.00 acres in Lander County.

1. At 9 a.m., on July 21, 2003, the land described above will be opened to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawls, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. July 21, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on July 21, 2003, the land described above will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawls, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of segregation is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 39 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 31, 2003.

**Helen Hankins,**

*Elko Field Office Manager.*

[FR Doc. 03–12514 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–100–1430–ET; ORE–05564]**

### Termination of Classification and Opening Order, Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** This notice terminates a Small Tract Classification and opens certain land near Winston, Oregon, that was classified for small tract lease under the Small Tract Act of June 1, 1938 (52 Stat. 609) as amended, to such uses as may be made of Reconveyed Coos Bay Wagon Road Grant Lands.

**EFFECTIVE DATE:** May 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Diann Rasmussen, South River Field Office, 777 NW., Garden Valley Blvd, Roseburg, Oregon 97470; 541–464–3292.

**SUPPLEMENTARY INFORMATION:** Classification Order No. L–10891 dated October 7, 1958, segregated the land described below from the public land laws and location and entry under the United States mining laws. The land remained open to the mineral leasing laws and the Small Tract Act for which a lease was issued. The lease has since expired and the land restored to its previous condition thereby making it suitable for such uses as may be made of Revested Coos Bay Wagon Road Grant Lands. Therefore, subject to valid existing rights, the provisions of existing withdrawals and other segregations of record, and pursuant to the regulations contained under 43 CFR 2091.7–1(b)(2), at 8 a.m. on May 20, 2003 land classification number L–10891, dated October 7, 1958, is hereby terminated in its entirety insofar as it affects the following described land:

**Willamette Meridian, Oregon**

T. 28 S., R. 7 W.,
Sec. 15, that portion of lots 12 and 13 formerly described as the south 3 chains of lot 6.

The area described contains 3 acres, more or less, in Douglas County.

All valid applications received prior to 8 a.m., on June 19, 2003, shall be considered as simultaneously filed at that time.

**Mark Buckbee,**

*Acting District Manager.*

[FR Doc. 03–12513 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–33–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–920–1430–EU; WYW 147166]**

### Opening of National Forest System Land; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice terminates the temporary segregative effect as to 40.00 acres of National Forest System lands which were originally included in an application for exchange in the Teton National Forest.

**EFFECTIVE DATE:** May 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Jimi Metzger, BLM Wyoming State Office, 5353 Yellowstone Rd., P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6250.

**SUPPLEMENTARY INFORMATION:** Pursuant to the regulations contained in 43 CFR 2091.3–2(b), at 9 a.m. on May 20, 2003, the following described lands will be relieved of the temporary segregative effect of exchange application WYW 147166:

**Sixth Principal Meridian, Wyoming**

T. 39 N., R. 116 W.,
sec. 13, N½N½SE¼.

The area described contains 40.00 acres in Teton County.

At 9 a.m. on May 20, 2003, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized.

Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The BLM will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: March 31, 2003.

**Michael Madrid,**

*Chief, Fluid Minerals, Lands, and Appraisal.*

[FR Doc. 03–12512 Filed 5–19–03; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NV–930–1430–ET; NVN 73931]**

## Public Land Order No. 7566; Withdrawal of Public Lands for the Rhyolite Historic Site; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order withdraws 277.046 acres of public lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Rhyolite historic site. The lands have been and will remain open to mineral leasing.

**EFFECTIVE DATE:** May 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Dennis Samuelson, BLM Nevada State Office, PO Box 12000, Reno, Nevada 89520, 775–861–6532.

### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not the mineral leasing laws, to protect the Rhyolite Historic Site:

**Mount Diablo Meridian**

T. 12 S., R. 46 E.,
Secs. 9, 16, and 21;

All those certain lots, pieces, or parcels of land situate in the County of Nye, State of Nevada, described as follows:

*Parcel 1:* The sleeper lode mining claim designated by the Surveyor General as Survey No. 3156, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 395 of Official Records, Page 317 as File No. 89058, Nye County Nevada Records, which further stipulated that portion of ground in said mining claim which is embraced in Sang De Cristo lode claim or Survey No. 2472 and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such ground are expressly excepted and excluded from said land.

*Parcel 2:* The Terry Mine, Cyclops and Side Scope lode mining claims designated by the Surveyor General as Survey No. 2585, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 395 of Official Records, Page 333 as File No. 89062, Nye County, Nevada Records, which further stipulated that all that portion of ground described in said mining claims which is embraced in Survey Nos. 2422, 2457, and 2583, the Trail Fraction and Touch Me Not lode claims, unsurveyed, that portion of Survey No. 2384 in conflict with survey No. 2457 and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such ground are expressly excepted and excluded from said land.

*Parcel 3:* The Sang De Cristo lode mining claim designated by the surveyor General as Survey No. 2472, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 395 of Official Records, Page 343 as File No. 89064, Nye County Nevada Records, which further stipulated that portion of ground in said mining claim which is embraced in mining claim or Survey 2584, the White Monument lode claim Survey No. 2650, and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such ground are expressly excepted and excluded from said land.

*Parcel 4:* The White Monument, Bonanza Fraction and Trail Fraction lode mining claims designated by the Surveyor General as Survey No. 2650, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 17 of Deeds, Page 162 as File No. 36763, Nye County Nevada Records, which further stipulated that portion of ground in said mining claim which is embraced in mining claim or Survey No. 2584, the Terry mine and Cyclops lode claims Survey No. 2585, that portion of survey No. 2472 in conflict with the Bonanza Fraction lode calm and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such ground are expressly excepted and excluded from said land.

*Parcel 5:* The Golden Sceptre and Golden Sceptre No. 2 lode mining claims designated by the Surveyor General as Survey No. 2584, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 17 of Deeds, Page 169 as File No. 36764, Nye County Nevada Records.

*Parcel 6:* The Gold Wedge lode mining claim designated by the Surveyor General as Survey No. 2583, embracing a portion of the unsurveyed public domain in the Bullfrog Mining District, Nye County, Nevada, and bounded and described in that certain Patent recorded in Book 395 of Official Records, Page 352 as File No. 89065, Nye County Nevada Records, which further stipulated that portion of ground in said mining claim which is embraced in mining claims or Surveys 2457, 2487 and 2488 and also all veins, lodes and ledges throughout their entire depth, the tops or apexes of which lie inside of such ground are expressly excepted and excluded from said land.

*Parcel 7:* The East half (E½) of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of the Southeast quarter (SE¼) of Section 9, Township 12 South, Range 46 East, M.D.B.&M., according to the Official Plat of the surveys of said land on file in the Office of the Bureau of Land Management.

*Parcel 8:* The West half (W½) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) of the Southeast quarter (SE¼) of Section 9, Township 12 South, Range 46 East, M.D.B.&M., according to the Official Plat of the surveys of said land on file in the Office of the Bureau of Land Management.

*Parcel 9:* Lots 15, 19 and 40 of Section 9, Township 12 South, Range 46 East, M.D.B.&M., according to the Official Plat of the surveys of said land on file in the Office of the Bureau of Land Management.

*Parcel 10:* Lots 1, 19, and 20, and the Northeast (NE¼) quarter of the Northeast (NE¼) quarter of Section 16, Township 12 South, Range 46 East, M.D.B.&M., according to the Official Plat of the surveys of said land on file in the Office of the Bureau of Land Management.

*Parcel 11:* The Southwest quarter (SW¼) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼) of the Northeast quarter (NE¼), the Southeast quarter (SE¼) of the Southeast quarter (SE¼) of the Northwest quarter (NW¼) of the Northeast quarter (NE¼), the East half (E½) of the Northeast quarter (NE¼) of the Southwest quarter (SW¼) of the Northeast quarter (NE¼), and the West half (W½) of the Northwest quarter (NW¼) of the Southeast quarter (SE¼) of the Northeast quarter (NE¼) of Section 21 , Township 12 South, Range 46 East, M.D.B.&M., according to the Official Plat of the surveys of said land on file in the Office of the Bureau of Land Management.

The areas described aggregate 277.046 acres in Nye County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review

conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: April 25, 2003.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 03–12601 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–010–1430–ET; UTU 42892]**

### Public Land Order No. 7567; Revocation of Public Land Order No. 62; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes a public land order in its entirety as to 106.83 acres of public land withdrawn for protection of manganese ore in support of prosecution of World War II. The withdrawal is no longer needed. The land will be opened to surface entry, mining, and mineral leasing.

**EFFECTIVE DATE:** June 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Nancy Demille, BLM Fillmore Field Office, 35 East 500 North, Fillmore, Utah 84631, 435–743–3127.

### Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 62, which withdrew land to protect manganese ore in support of prosecution of World War II, is hereby revoked in its entirety as it affects the following described land:

**Salt Lake Meridian**

T. 14 S., R. 11 W.,
Sec. 25, lots 3, 4, 5, and 6.

The area described contains 106.83 acres in Juab County.

2. At 10 a.m. on June 19, 2003, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on June 19, 2003, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on June 19, 2003, the land will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. State law governs acts required to establish a location and to initiate a right of possession where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 25, 2003.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 03–12600 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–09–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–180–5700–EU; CACA–43503]**

### Notice of Realty Action: Non-Competitive Sale of Public Lands, Amador, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The public lands identified below have been examined and found suitable for disposal pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750–51; 43 U.S.C. 1713, and 90 Stat. 2757–58, 43 U.S.C. 1719), and the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248), at not less than appraised market value. The market value opinion of the approved appraisal is $5,000. The potential buyer of the parcel will make application under section 209 of the Federal Land Policy and Management Act of October 21, 1976, to purchase the mineral estate along with the surface.

**Mount Diablo Meridian**

T. 6 N., R. 12 E.,
Sec. 9, Lot 49
containing 1.17 acres more or less.

The purpose of the proposed sale is to dispose of a parcel of public land that is difficult and uneconomic to manage as part of the public lands of the United States. It is also proposed for sale in order to resolve a trespass of Isak Hansen. The proposed sale is consistent with the Folsom Field Office Sierra Planning Area Management Framework Plan (July 1988), and the public interest will be served by offering the parcel for sale. The parcel will be offered for non-competitive sale to Isak Hansen, the adjacent landowner.

Pursuant to the Federal Land Transaction Facilitation Act of July 25, 2000 (Pub. L. 106–248), the proceeds from the sale will be deposited into a Federal Land Disposal Account and used to acquire non-federal land within the State of California. The money will be used to purchase lands for the BLM, National Park Service, Forest Service, or Fish and Wildlife Service.

Conveyance of the available mineral interests would occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will reserve the following: By Executive Order for Power Site Reserve 416, subject to Section 24 of the Federal Power Act on July 24, 1997. Reservation for ditches and canals

**DATES:** Until July 7, 2003, interested parties may submit comments pertaining to this action. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

**ADDRESSES:** Written comments concerning the proposed sale should be sent to the Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California 95630.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the land sale, including relevant planning and environmental documentation, may be obtained from the Folsom Field Office at the above address. Telephone calls may be directed to Jodi Swaggerty at (916) 985–4474.

**SUPPLEMENTARY INFORMATION:** Objections to the sale will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposal will

become the final determination of the Department of the Interior.

Publication of this notice in the **Federal Register** will segregate the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first. Pursuant to the application to convey the mineral estate, the mineral interests of the United States are segregated from appropriation under the public land laws, including the mining laws for a period of two years from the date of filing the application.

Dated: January 17, 2003.

**Howard K. Stark,**

*Chief, Branch of Lands Management.*

[FR Doc. 03–12515 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CA–680–1430–ES; CALA 0165216]**

## Renewal of Airport Lease for the Baker Airport, Baker, CA

**AGENCY:** Bureau of Land Management, (BLM) Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** Notice is given that the County of San Bernardino has filed an application to renew its airport lease CALA 0165216 for a twenty-year period. The application was filed pursuant to the Act of May 24, 1928, as amended and the regulations at 43 CFR 2911. This airport is located on public lands within the California Desert District, Barstow Field Office, California. In accordance with 43 CFR 2911.2–3, a Notice of Realty Action shall be issued for a 45-day comment period from the public.

**DATES:** Submit comments on or before July 7, 2003.

**ADDRESSES:** Mail written comments to the BLM, Attn: Realty Section, 2601 Barstow Road, Barstow, CA, 92311.

**FOR FURTHER INFORMATION CONTACT:** Joan Patrovsky, Barstow Field Office Manager, Bureau of Land Management, 2601 Barstow Road, Barstow, CA 92311; or call (760) 252–6032.

**SUPPLEMENTARY INFORMATION:** The described public lands:

**San Bernardino Meridian, CA**

T.14 N., R. 8 E., Sec. 24, W ½ NE ¼ and SE ¼.

Containing a total of 240 acres.

The San Bernardino County Department of Airports, a County government agency, has filed an application to renew the lease of the above-described public lands. The land is located approximately 65 miles northeast of Barstow, CA, in the small unincorporated community of Baker, CA, which is situated adjacent to Interstate 15.

The Department of Airports proposes to continue use of the land for general aviation public use that supports the needs of the community, serves as an emergency airfield for pilots transiting the area between Las Vegas, Nevada, and the southern coastal basin area of Southern California, and provides a vital public safety role for law enforcement and emergency ambulance flights. Renewal of the lease will allow these services and needs to continue.

Until July 7, 2003, interested persons may submit comments, regarding the proposed lease of the lands, to the Field Manager, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311, (760) 252–6000. The Barstow Field Manager will review any adverse comments. In the absence of any adverse comments, a lease may be issued upon completion of the 45 day comment period.

Dated: April 8, 2003.

**Duane Marti,**

*Acting Chief, Branch of Lands Management.*

[FR Doc. 03–12521 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–40–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[ID–077–1430–ES; IDI–34149]**

## Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The following public lands, managed by the Bureau of Reclamation (BOR), in Minidoka County, Idaho have been examined and found suitable for classification for sale to the City of Rupert, Idaho (City), under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City proposes to use the land for the application of treated waste water from their existing waste water treatment plant by center pivot, wheel line and hand line sprinkler irrigation systems and to allow farming of the land via agreements with local farmers.

*T. 8 S., R. 24 E., Boise Meridian*

section 34: S½SE¼,NW¼,SW3¼,

section 35: E½,SW¼.

The area described contains 600 acres, more or less, in Minidoka County, ID.

Approximately 100 acres of the parcel proposed for sale is currently being used for land application and farming purposes under a lease from the BOR to the City. The City is proposing to add two additional pivots as well as wheel lines and hand lines so as to provide approximately 565 acres of land application/farmed area within the 600 acre parcel.

The above described lands are not needed for Federal (BOR) purposes in accordance with their land use planning and a notice has been filed with the BLM to revoke the reclamation withdrawals on these lands. The sale of these lands is consistent with the Monument Resource Management Plan and would be in the public interest.

The R & PP Patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

Detailed information concerning this action is available for review at the Burley Field Office of the Bureau of Land Management, 15 East 200 South, Burley, Idaho.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms or appropriation under the public land laws, including the general mining laws, except for sale under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification or sale of the lands to the Field Office Manager, Burley Field Office, 15 East 200 South, Burley, Idaho 83318.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for application of treated waste water. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for application of treated waste water.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: March 28, 2003.

**Bernie Jansen,**

*Acting Burley Field Office Manager.*

[FR Doc. 03–12510 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–GG–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[ID–076–1430–ES–IDI–33109]**

## Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification; ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Idaho.

**SUMMARY:** The following public lands near the community of Shoshone, Lincoln County, Idaho have been examined and found suitable for classification for lease or conveyance to Lincoln County Sheriff's Department, Idaho under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Lincoln County Sheriff's Department proposes to use the lands for a public shooting range, special weapon training, and a building entry/high-risk vehicle training area.

**Boise Meridian**

T. 6 S., R. 17 E.,
Sec. 12, W2NWNW (portion of Lot 4).
Containing 20 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

**SUPPLEMENTARY INFORMATION:** Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager; Upper Snake River District, 1405 Hollipark Drive, Idaho Falls, Idaho 83401–2100. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Upper Snake River District, Shoshone Field Office, and 400 West F Street, Shoshone, Idaho 83352.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for a shooting range, special weapon training, and building entry and high-risk vehicle training area. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may also submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a shooting range, special weapon training, and building entry and high-risk vehicle training area.

The State Director will review any adverse comments. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** The BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352.

Dated: April 1, 2003.

**James E. May,**

*District Manager.*

[FR Doc. 03–12520 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–GG–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[ID–090–5700–EU; IDI–34203; DBG–03–003]**

## Notice of Realty Action, Sale of Public Land in Owyhee County, Idaho; Termination of Desert Land Entry and Carey Act Classifications and Opening Order

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice and sale of public land in Owyhee County.

**SUMMARY:** This notice terminates a suitable Desert Land Entry and Carey Act classification on 80.00 acres so that a portion of the land can be patented under the Federal Land Policy and Management Act (Act of October 21, 1976, as amended). The following-described public land has been examined and found suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at not less than the appraised fair market value of $2,200. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

**Boise Meridian, Owyhee County, Idaho**

T. 7 S., R. 6 E., section 7: Lot 6
Containing ± 0.96 acres.

The patent, when issued, will contain a reservation to the United States for ditches and canals.

**DATES:** On May 20, 2003 the Desert Land Entry and Carey Act classification on the 80 acres of public land described below will be terminated. Also, the 0.96-acre parcel described above for sale will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act. The segregative effect will end upon issuance of patent or on February 16, 2004, whichever occurs first.

**ADDRESSES:** Owyhee Field Office 3948 Development Avenue, Boise, Idaho 83705–5389.

**FOR FURTHER INFORMATION CONTACT:** Candi Miracle, Realty Specialist, at the address shown above or (208) 384–3455.

**SUPPLEMENTARY INFORMATION:** On April 10, 1986, the following public land was classified as suitable for entry under the authority of the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321 *et seq.*) and the Carey Act of August 18, 1894 (28 Stat.42), as amended (43 U.S.C. 641 *et seq.*)

**Boise Meridian, Owyhee County, Idaho**

T. 7 S., R. 6 E., section 7: W½SE¼.
Containing ± 80.00 acres.

The classifications are hereby terminated and the segregation for Desert Land Entry and Carey Act are hereby terminated.

This 0.96 acre parcel of land is being offered by direct sale to Susan H. Davis of Boise, Idaho, based on historic use and value of added improvements. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests will be conveyed simultaneously.

Interested parties may submit comments to the Owyhee Field Office Manager at the above address until July 7, 2003. The Owyhee Field Manager, who may vacate or modify this realty action to accommodate any protests, will review any adverse comments received. If a protest is not accommodated, the comments are subject to review of the District Manager who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: April 1, 2003.

**Jenna Whitlock,**

*Owyhee Field Manager.*

[FR Doc. 03–12524 Filed 5–19–03; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[ES–032–3–1430–EU]**

## Realty Action; Recreation and Public Purpose Act Classification; Leelanau County, MI

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following public lands near the community of Northport in Leelanau County, Michigan have been examined and found suitable for classification for lease or conveyance to the State of Michigan Department of Natural Resources, under the provisions of the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*). Therefore, in accordance with section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f) and EO 6964, the following described lands are hereby classified as suitable for disposal under the provisions of the R&PP Act of 1926, as amended (43 U.S.C. 869 *et seq.*) and, accordingly, opened for only that purpose.

**Michigan Meridian**

T. 32 N., R. 10 W.,

Grand Traverse Light Station Reservation, located in Lot 3, Section 6 being more particularly described as:

Beginning at the intersection of sections 5, 6, 7 and 8, T. 32 N., R. 10 W.,
Thence,
N. 53° 27′ W., 34.456 chains, to Angle Point #1, the place of beginning,
N. 0° 18′ E., 12.600 chains, to Angle Point #2 on the present shoreline of Lake Michigan,
Thence, with the meanders of Lake Michigan,
S. 89° 41′ W., 2.199 chains,
S. 70° 45′ W., 3.741 chains,
N. 82° 22′ W., 4.781 chains,
S. 80° 33′ W., 2.563 chains,
S. 19° 35′ W., 5.144 chains,
S. 9° 47′ E., 6.241 chains to Special Meander Corner,
S. 89° 42′ E., 13.636 chains to Angle Point #1, the place of beginning, as shown on the plat of survey for the Grand Traverse Light Station in Lot 3, Section 6, accepted for the Director on January 22, 2002.

The area described contains 16.37 acres in Leelanau County.

The State of Michigan, Department of Natural Resources proposes to integrate the lands into the existing Leelanau State Park. This action classifies the lands identified above for disposal through the Recreation and Public Purposes Act of 1926 (43 U.S.C. 869 *et seq.*) to protect the historic lighthouse, lighthouse related structures and the surrounding lands. The subject land was identified in the Michigan Resource Management Plan Amendment, approved June 30, 1997, as not needed for Federal purposes and having potential for disposal to protect the historic structures and surrounding lands. Lease or conveyance of the land for recreational and public purpose use would be in the public interest. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Milwaukee Field Office, Wisconsin.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Salvatore, Realty Specialist, Bureau of Land Management, Milwaukee Field Office, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203, (414) 297–4413.

**SUPPLEMENTARY INFORMATION:** Pursuant to an Executive Order dated June 30, 1851, a parcel of public land totaling 58.75 acres was reserved for lighthouse purposes on the Leelanau Peninsula. In accordance with Public Law 827 dated March 3, 1931, a deed was issued on February 15, 1932, to the State of Michigan for that portion of the lighthouse reservation no longer needed for lighthouse purposes. The portion conveyed was to be used for public park purposes and comprised approximately 42.38 acres.

The Department of Transportation, United States Coast Guard, submitted a Notice of Intent (NOI) to relinquish custody, accountability, and control of the remaining 16.37 acres, more or less. The Bureau of Land Management has recommended that the remaining lands be determined suitable for return to their former status as public lands, such determination to be made by the Secretary of the Interior and accomplished by the issuance of a public land order revoking the Executive Order as to the remaining lands. A proposed public land order for this purpose currently is pending and awaiting action within the Department.

The State of Michigan Department of Natural Resources has applied for patent to the land under the R&PP Act of 1926, as an addition to Leelanau State Park.

The lease/patent when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act of 1926, as amended and to all applicable regulations of the Secretary of the Interior.
2. Valid existing rights.
3. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals.
4. Terms and conditions identified through the site specific environmental analysis.
5. Any other rights or reservations that the authorized officer deems appropriate to ensure public access and proper management of Federal lands and interest therein.

Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all forms of disposal or appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. Interested parties may submit comments regarding

the proposed conveyance or classification of the lands to the Field Manager, Milwaukee Field Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 450, Milwaukee, Wisconsin 53203 until July 7, 2003.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for R&PP Act classification, and particularly, whether the land is physically suited for inclusion in the state park, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application, the development plan, the management plan, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for inclusion in the state park.

Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on July 21, 2003.

Dated: April 11, 2003.

**James W. Dryden,**

*Milwaukee Field Manager.*

[FR Doc. 03–12523 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–PN–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[UT–050–1430–ES; UTU–77200, UTU–79470]**

## Notice of Realty Action, Recreation and Public Purposes Act (R&PP Classifications, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following public lands in Sevier County near the community of Glenwood, Utah have been examined and found suitable for classification for lease or conveyance to the Town of Glenwood for cemetery purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et eq.*):

**Salt Lake Meridian**

T.23 S., R.2 W.
Sec.23, SE¼NW¼SW¼SE¼, NE¼SW¼SW¼SE¼, SW¼SW¼SW¼SE¼, and SE¼SW¼SW¼SE¼.
containing 10.00 acres more or less.

The following public lands in a Piute County near the community of Marysvale, Utah has been examined and found suitable for classification for lease or conveyance to the Town of Marysvale for city park purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

**Salt Lake Meridian**

T. 27 S., R. 4 W.
Sec. 35, lot 3.
containing 5.15 acres more or less.

The existing amended Mountain Valley Management Framework Plan (MFP) allows for these types of actions under the Recreation and Public Purposes Act. The proposed actions are in conformance with the land use plan. Because of the resource values, public values and objectives involved, the public interest may well be served by making these public lands available under the R&PP Act. An environmental assessment will be prepared by an interdisciplinary team to analyze the impacts of these proposals and alternatives.

The lease or conveyance of the lands, when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Detailed information concerning this action is available at the office of the Bureau of Land Management, 150 East 900 North, Richfield, Utah, 84701.

On May 20, 2003 the public lands described above are segregated from all other forms of appropriation under the public land laws, including the general mining laws, the mineral leasing laws and the Materials Act of 1947, except for lease or conveyance under the Recreation and Public Purposes Act.

**DATES:** Interested persons may submit comments regarding the proposed classifications and lease/conveyance of the lands to the Bureau of Land Management Richfield Field Manager, Richfield Field Office, 150 East 900 North, Richfield, Utah 84701 until July 7, 2003.

*Classification Comments:* Interested parties may submit comments involving the suitability of the public lands for the proposed uses. Comments on the classifications are restricted to whether the lands are physically suited for the proposed uses, whether the uses will maximize the future use or uses of the lands, whether the uses are consistent with local planning and zoning, or if the uses are consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific uses proposed in the applications and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for purposes proposed. Comments, including names and addresses of respondents will be available for public review at the BLM Richfield Field Office and may be published as part of the Environmental Assessment and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written request. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entity.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective on July 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the R&PP leases or conveyances may be obtained from the Richfield Field Office at the above address. Telephone call may be directed to Kay Erickson at (435) 896–1500.

Dated: March 31, 2003.

**Aden Seidlitz,**

*Field Manager.*

[FR Doc. 03–12518 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–050–1430–UTU–79468]**

### Realty Action Notice

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following public lands in Sevier County, Utah, have been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value of $167,000. Salt Lake Meridian, Utah. T. 22 S., R. 1 W. Section 1, Lots 1 thru 4 and S½N½, N½SW¼, SW¼SW¼, containing 440.85 acres. Authority for the sale is Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA). The land will not be offered for sale until at least 60 days after the date of this notice.

**DATES:** For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the sale of the lands to the Field Manager, Richfield Field Office at the address shown below. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

**ADDRESSES:** Comments on the proposed sale should be sent to Aden Seidlitz, Field Manager, Richfield Field Office, 150 East 900 North, Richfield, Utah 84701. Comments, including names and addresses of respondents will be available for public review at the Bureau of Land Management, Richfield Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). Individual respondents may request confidentiality. If you wish to have your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Aden Seidlitz, Richfield Field Manager, 150 East 900 North, Richfield, Utah 84701 or telephone (435) 896–1500. Existing planning documents and information are available at the above address.

**SUPPLEMENTARY INFORMATION:** Upon publication of this notice in the **Federal Register**, the lands described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. The land is being offered to Salina City, Utah, at not less than the appraised fair market value of $167,000. All minerals in the lands would be reserved to the United States. Detailed information concerning the sale will be available to interested parties from the Richfield Field Office, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

Dated: March 7, 2003.

**Aden L. Seidlitz,**

*Field Manager, Richfield Field Office.*

[FR Doc. 03–12519 Filed 5–19–03; 8:45 am]

**BILLING CODE 4310–DQ–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–074–1654–HB DA5V]**

### Temporary Closure of Egin Lakes Access Recreation Site to Overnight Camping, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure.

**SUMMARY:** Notice is hereby given that the following described lands are temporarily closed to overnight camping until further notice during the construction of Egin Lakes Access Recreation Site overnight and day use facilities. The temporary closure is for the protection of public users' health and safety under the provisions of 43 CFR 8364.1 and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701). Day use access will still be permitted with the possible exception of days where there is heavy construction activity. Persons with authorizations to utilize the area by BLM regulations, contracts, leases or permits, may use the area described in accordance with those authorizations. This temporary closure will remain in effect for up to three years or until rescinded or modified by the Idaho Falls Field Manager.

**EFFECTIVE DATE:** This order is effective when published in the **Federal Register**.

*Legal Description:*

**Boise Meridian, Idaho**

Township 7 N, Range 39 E, Section 3: N ½, NW ¼ SW ¼

**SUPPLEMENTARY INFORMATION:** About 20 acres of public land are involved in the construction project, which is adjacent to the Sand Mountain Wilderness Study Area (WSA) and the 36,900 acre St. Anthony Sand Dunes Special Recreation Management Area (SRMA) in Fremont and Jefferson Counties. Modifications to the site are in accordance with the BLM's overall Recreation Project Site Plan that was approved in August 2001. This project plan involves three phases of development as part of BLM's Deferred Maintenance Program. All three phases are planned to be completed by 2006. The project is to accommodate the current number of users who use the site for dispersed camping and day use parking for access onto the St. Anthony Sand Dunes. Visitor use to the existing four-acre site has increased dramatically during the past two decades. The site received over 88,000 visits in FY2000. The majority of use is from April through October. On most spring and summer weekends and holidays the site with its facilities is over utilized beyond its capacity.

The first phase of the project is to upgrade the existing access road and prepare the surface for a 50-unit campground, visitor contact area, and additional day use parking areas. This phase started last fall and will be completed sometime in the summer of 2003. The site will be posted: Closed to Overnight Camping.

During the construction of the recreation site, the public can camp and access the sand dunes from the nearby private campgrounds or off public land along the Red Road where allowed.

This closure will be monitored and enforced by the BLM and Fremont County Sheriff's Department. Authority for this temporary closure order may be found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

**FOR FURTHER INFORMATION CONTACT:** Bill Boggs, Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7527. A map showing the available overnight camping and the closure area will be available from the BLM, Idaho Falls Field Office.

Dated: April 14, 2003.

**Carol McCoy Brown,**

*Idaho Falls Field Manager.*

[FR Doc. 03–12517 Filed 5–19–03; 8:45 am]

**BILLING CODE 4310–AG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–030–1430–BJ, ES–051868, Group 551, Minnesota]**

### Notice of Filing of Plat of an Island; Minnesota

1. The Bureau of Land Management (BLM) will officially file the plat of the planimetric survey of an island in Two Inlets Lake, Township 141 North, Range 36 West, Fifth Principal Meridian, Minnesota, accepted on May 6, 2003, in the Eastern States Office, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**. The tract shown below describes the island omitted from the original survey.

Fifth Principal Meridian, Minnesota T.

141 N. R. 36 W. Tract No. 37

2. Tract No. 37, Lakes States County Sequential Control No. 001, Becker County, is firm land rising 10–15 ft. above the ordinary high water mark. The north and northeast sides of the island have a well defined bank, 2–3 ft. high. The soil composition is of glacial till topped with a layer of humus 6–9 in. deep and is similar to the soil found on the adjacent uplands. Several large stumpholes from wind-thrown trees were observed on the island. Tree species consist of aspen, clump basswood, balsam fir, elm, and birch, ranging in size from 4 to 23 inches in diameter, with a maximum age of 75+ years. The ground cover consists of sapling trees, briar, hazel, cranberry, sumac and native grasses.

3. MN Department of Natural Resources (DNR) has recorded the water levels of Two Inlets Lake from 1938 to the present. The MN DNR reports the average water level for this period to be 1456.09 ft. NGVD 1929. The DNR reading taken closest to the date of the aerial imagery was recorded on May 5, 1991, as 1456.21 ft. NGVD 1929. The present water level of the lake agrees with the levels reported by the MN DNR. The record meander line was overlaid to scale on the 1991 aerial imagery and found to compare favorably. The open water channel between the south end of the island and the adjoining upland is 4 chains across and averages 10 feet deep.

4. The upland character of this island along with the depth and width of the channel attests to its existence in 1858 when Minnesota was admitted to the Union; in 1878 at the time of the original survey; and at all subsequent dates.

5. The island returned by this plat is classified as being more than 50 percent upland in character within the purview of the Swamp and Overflow Act of September 28, 1850 (9 Stat. 519) as extended to the State of Minnesota under the Act of March 12, 1860 (12 Stat. 3).

6. The survey was requested by the Assistant Field Manager, Division of Natural Resource Management, under the authority of the Minnesota Public Lands Improvement Act (MPLIA) of 1990, Pub. L. 101–442 (104 Stat. 1020).

7. Except for valid existing rights, this island will not be subject to application, petition, location or selection under any public law until 30 calendar days after the date of publication in the **Federal Register**.

8. Interested parties protesting the determination that this island is public land of the United States, must present valid proof showing that the island did not exist at the time of statehood or that it was attached to the mainland at the time of the original survey. Such protests must be submitted in writing to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to the date of the official filing.

We will place a copy of the plat we described in the open files. Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: May 13, 2003.

**Stephen D. Douglas,**

*Chief Cadastral Surveyor.*

[FR Doc. 03–12537 Filed 5–19–03; 8:45 am]

**BILLING CODE 4310–GJ–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Agency Information Collection Activities Under OMB Review; Comment Request

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of renewal of currently approved collection (OMB No. 1006–0005).

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0005. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Your comments must be received on or before June 19, 2003.

**ADDRESSES:** You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile at (202) 395–5806 or e-mail at *Ruth_Solomon@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225–0007.

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy of the proposed forms contact Stephanie McPhee, D–5200, PO Box 25007, Denver, CO 80225–0007; or by telephone: (303) 445–2897.

**SUPPLEMENTARY INFORMATION:**

*Title:* Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

*Abstract:* This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. These forms are submitted to districts who use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements.

All landholders whose entire westwide landholdings total 40 acres or less are exempt from the requirement to submit Reclamation Reform Act of 1982 (RRA) forms. Landholders who are ''qualified recipients'' have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms. This collection of information allows the Bureau of Reclamation (we, our, or us) to establish landholders' compliance with Federal reclamation law.

**Changes to the RRA Forms and the Instructions to Those Forms.**

Several proposed changes were made to the current RRA forms and the instructions to those forms prior to the 60-day comment period initiated by the notice published in the **Federal Register** on December 27, 2002 (67 FR 79144, Dec. 27, 2002). Those changes were designed to increase the respondents' understanding of the forms, instructions to the forms, and what information is required to be submitted with the forms to the districts. Comments resulting from the 60-day comment period consisted of minor language additions, deletions, and revisions to specific areas of certain RRA forms. Such additions, deletions, and revisions reflected language found in current RRA directives and/or in other places within the current RRA forms. Changes based on the comments received were made when the changes resulted in increased clarity and increased correctness of the RRA forms and the corresponding instructions. All other changes that were made are editorial or typographical in nature. The proposed revisions to the RRA forms will be included starting in the 2004 water year.

*Frequency:* Annually.

*Respondents:* Landholders and farm operators of certain lands in our projects, whose westwide landholdings exceed specified RRA forms submittal thresholds.

*Estimated Total Number of Respondents:* 18,272.

*Estimated Number of Responses per Respondent:* 1.02.

*Estimated Total Number of Annual Responses:* 18,638.

*Estimated Total Annual Burden on Respondents:* 13,902 hours.

*Estimate of Burden for Each Form:*

| Form No. | Estimated number of respondents | Frequency of response | Total annual reponses | Burden estimate per form (in minutes) | Total burden hours |
|---|---|---|---|---|---|
| Form 7–2180 | 5,019 | 1.02 | 5,119 | 60 | 5,119 |
| Form 7–2180EZ | 503 | 1.02 | 513 | 45 | 385 |
| Form 7–2181 | 1,620 | 1.02 | 1,652 | 78 | 2,148 |
| Form 7–2184 | 38 | 1.02 | 39 | 45 | 29 |
| Form 7–2190 | 1,845 | 1.02 | 1,882 | 60 | 1,882 |
| Form 7–2190EZ | 109 | 1.02 | 111 | 45 | 83 |
| Form 7–2191 | 880 | 1.02 | 898 | 78 | 1,167 |
| Form 7–2194 | 4 | 1.02 | 4 | 45 | 3 |
| Form 7–21PE | 188 | 1.02 | 192 | 66 | 211 |
| Form 7–21PE-IND | 5 | 1.02 | 5 | 12 | 1 |
| Form 7–21TRUST | 1,083 | 1.02 | 1,105 | 60 | 1,105 |
| Form 7–21VERIFY | 6,375 | 1.02 | 6,503 | 12 | 1,301 |
| Form 7–21FC | 243 | 1.02 | 248 | 30 | 124 |
| Form 7–21XS | 164 | 1.02 | 167 | 30 | 84 |
| Form 7–21FARMOP | 196 | 1.02 | 200 | 78 | 260 |
| Total | 18,272 | 1.02 | 18,638 | ..... | 13,902 |

**Comments**

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** on December 27, 2002 (67 FR 79144, Dec. 27, 2002). A list of the comments received and our responses to those comments will be sent to: (1) All districts, (2) all commenters, and (3) OMB with the ICR; it is also available from us upon request.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: April 2, 2003.

**Richard Rizzi,**

*Acting Director, Office of Policy.*

[FR Doc. 03–12538 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–MN–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Agency Information Collection Activities Under OMB Review; Comment Request

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of renewal of currently approved collection (OMB No. 1006–0023).

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment: Limited Recipient

Identification Sheet and Trust Information Sheet for Acreage Limitation, 43 CFR part 426, OMB Control Number: 1006–0023. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Your comments must be received on or before June 19, 2003.

**ADDRESSES:** You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile at (202) 395–5806 or e-mail at *Ruth_Solomon@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225–0007.

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy of the proposed forms contact Stephanie McPhee, D–5200, PO Box 25007, Denver, CO 80225–0007; or by telephone: (303) 445–2897.

**SUPPLEMENTARY INFORMATION:**

*Title:* Limited Recipient Identification Sheet and Trust Information Sheet for Acreage Limitation, 43 CFR part 426.

*Abstract: Identification of limited recipients*—Some entities that receive Reclamation irrigation water may believe themselves to be under the Reclamation Reform Act of 1982 (RRA) forms submittal threshold and consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefitting from each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land) may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the entity first started to receive Reclamation irrigation water deliveries after October 1, 1981 (43 CFR 426.6(b)(2)). The information obtained through completion of the Limited Recipient Identification Sheet allows the Bureau of Reclamation (we, our, or us) to establish entities' compliance with Federal reclamation law. The Limited Recipient Identification Sheet is disbursed at our discretion.

*Trust review*—We are required to review and approve all trusts (43 CFR part 426.7(b)(2)) in order to ensure trusts meet the regulatory criteria specified in 43 CFR part 426.7. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the regulatory criteria are met. When we become aware of trusts with a relatively small landholding (40 acres or less), we may extend to those trusts the option to complete and submit for our review the proposed Trust Information Sheet instead of actual trust documents. If we find nothing on the completed, Trust Information Sheet that would warrant the further investigation of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review. The Trust Information Sheet is disbursed at our discretion.

**Changes to the RRA Forms and the Instructions to Those Forms**

Several proposed changes were made to the current forms prior to the 60-day comment period initiated by the notice published in the **Federal Register** on December 27, 2002 (67 FR 79145, Dec. 27, 2002). Those changes were designed to increase the respondents' understanding of the forms and how to complete them. Comments resulting from the 60-day comment period consisted of minor language revisions, layout revisions to specific areas of the forms, and the addition of two questions (one per form) that will diminish the need for Reclamation to pursue further information from respondents in certain cases. Changes based on the comments received were made when the changes resulted in increased clarity and increased correctness of the forms and the corresponding instructions. All other changes that were made are editorial or typographical in nature. The proposed revisions to the forms will be included starting in the 2004 water year.

*Frequency:* Generally, these forms will be submitted once per identified entity or trust. Each year, we expect new responses in accordance with the following numbers.

*Respondents:* Entity landholders and trusts identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

*Estimated Total Number of Respondents:* 325.

*Estimated Number of Responses per Respondent:* 1.00.

*Estimated Total Number of Annual Responses:* 325.

*Estimated Total Annual Burden on Respondents:* 27 hours.

*Estimate of Burden for Each Form:*

| Form No. | Estimated number of respondents | Frequency of response | Total annual responses | Burden estimate per form (in minutes) | Total burden hours |
|---|---|---|---|---|---|
| Limited Recipient Identification Sheet | 175 | 1.00 | 175 | 5 | 15 |
| Trust Information Sheet | 150 | 1.00 | 150 | 5 | 12 |
| Total | 325 | 1.00 | 325 | ..... | 25 |

**Comments.**

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the ''Limited Recipient Identification Sheet'' and the ''Trust Information Sheet.'' A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** on December 27, 2002 (67 FR 79145, Dec. 27, 2002).

A list of the comments received and our responses to those comments will be sent to: (1) All districts, (2) all commenters, and (3) OMB with the ICR; it is also available from us upon request.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: April 2, 2003.

**Richard Rizzi,**

*Acting Director, Office of Policy.*

[FR Doc. 03–12539 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–MN–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Agency Information Collection Activities Under OMB Review; Comment Request

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of renewal of a currently approved collection (OMB No. 1006–0006).

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment: Certification Summary Form and Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number: 1006–0006. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Your comments must be received on or before June 19, 2003.

**ADDRESSES:** You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile at (202) 395–5806 or e-mail at *Ruth_Solomon@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: D–5200, PO Box 25007, Denver, CO 80225–0007.

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy of the proposed forms contact Stephanie McPhee, D–5200, PO Box 25007, Denver, CO 80225–0007; or by telephone: (303) 445–2897.

**SUPPLEMENTARY INFORMATION:**

*Title:* Certification Summary Form and Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

*Abstract:* The summary forms in this information collection are to be used by district offices to summarize individual landholder (direct or indirect landowner or lessee) and farm operator certification and reporting forms as required by the Reclamation Reform Act of 1982 (RRA), 43 CFR part 426 and 43 CFR part 428. This information allows the Bureau of Reclamation (we, our, or us) to establish water user compliance with Federal reclamation law.

**Changes to the Reclamation Reform Act of 1982 (RRA) Forms and the Instructions to Those Forms**

Proposed changes were made to the current Form 7–21SUMM–C, Form 7–21SUMM–R, the corresponding tabulation sheets, and the corresponding instructions prior to the 60-day comment period initiated by the notice published in the **Federal Register** on December 27, 2002 (67 FR 79147, Dec. 27, 2002). Those changes were designed to increase the respondents' understanding of the summary forms, the instructions to the summary forms, and what information is required to be submitted to Reclamation. Comments resulting from the 60-day comment period consisted of minor language additions, deletions, and revisions to specific areas of certain summary forms. Such additions, deletions, and revisions reflected language found in current RRA directives and/or in other places within the current summary forms. Changes based on the comments received were made when the changes resulted in increased clarity and increased correctness of the summary forms and the corresponding instructions. All other changes that were made are editorial or typographical in nature. The proposed revisions to the summary forms will be included starting in the 2004 water year.

*Frequency:* Annually.

*Respondents:* Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

*Estimated Total Number of Respondents:* 256.

*Estimated Number of Responses per Respondent:* 1.25.

*Estimated Total Number of Annual Responses:* 320.

*Estimated Total Annual Burden on Respondents:* 12,800 hours.

*Estimate of Burden for Each Form:*

| Form No. | Estimated number of respondents | Frequency of response | Total annual responses | Burden hours per response | Total burden hours |
|---|---|---|---|---|---|
| 7–21SUMM–C and tabulation sheets | 203 | 1.25 | 254 | 40 | 10,160 |
| 7–21SUMM–R and tabulation sheets | 53 | 1.25 | 66 | 40 | 2,640 |
| Total | 256 | 1.25 | 320 | | 12,800 |

**Comments**

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of

automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** on December 27, 2002 (676 FR 79147, Dec. 27 2002). A list of the comments received and our responses to those comments will be sent to: (1) All districts, (2) all commenters, and (3) OMB with the ICR; it is also available from us upon request.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: April 2, 2003.

**Richard Rizzi,**

*Acting Director, Office of Policy.*

[FR Doc. 03–12540 Filed 5–19–03; 8:45 am]

BILLING CODE 4310–MN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,983]**

### Advanced Machining, Inc., Newberg, Oregon; 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 which was filed by a company official on behalf of workers at Advanced Machining, Inc., Newberg, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 8th day of May, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12559 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,653]**

### AID Temporary Services Osceola, Arkansas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as mended, an investigation was initiated on April 30, 2003 in response to a worker petition filed on behalf of workers at AID Temporary Services, Osceola, Arkansas.

The petitioning group of workers is covered by an active certification (TA–W–50,548 amended) which remains in effect.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 6th day of May, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12573 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,242]**

### Beres Industries, Inc., Lakewood, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 4, 2002 in response to a petition dated November 20, 2002, and filed by a company official on behalf of workers at Beres Industries, Inc., Lakewood, New Jersey. The workers produced plastic injection molds, audio cassettes and computer printed cartridges.

The investigation revealed that the subject firm was sold in May 2000. Section 223(b)(1) of the Trade Act of 1974, specifies that no certification may apply to a worker separated more than one year prior to 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 9th day of May 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12556 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,129]**

### CERF Brothers Bag Company Vandalia, Missouri; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 11, 2003 in response to a worker petition which was filed by a company official on behalf of workers at Cerf Brothers Bag Company, Vandalia, Missouri, (TA–W–51,129) and Cerf Brothers Bag Company, New London, Missouri.

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 9th day of May 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12560 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,183]**

### Columbia Falls Aluminum Company, a Wholly-Owned Subsidiary of Glencore International, Columbia Falls, Montana; 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 petition filed by a company official on behalf of workers at Columbia Falls Aluminum Company, Columbia Falls, Montana.

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 1st day of May, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12569 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,157]**

### DBM Technologies LLC, Blow Molding, Corunna, Michigan; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 14, 2003, in response to a worker petition filed on behalf of workers at DBM Technologies LLC, Blow Molding, Corunna, Michigan.

The subject plant closed more than one year prior to 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, the investigation has been terminated.

Signed in Washington, DC, this 9th day of May, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12561 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,800]**

### Flexcel-Batesville, Batesville, Mississippi; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 6, 2003, in response to a petition filed by the company on behalf of workers of Flexcel-Batesville, Batesville, Mississippi. The workers produce metal furniture and automotive components.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 5th day of May, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12558 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,672]**

### GE Industrial Systems, a Wholly-Owned Subsidiary of General Electric, Inc., Shreveport, Louisiana and Conover, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 2, 2003, in response to a petition filed by a company official on behalf of workers at GE Industrial Systems, a wholly-owned subsidiary of General Electric, Inc., Shreveport, Louisiana and Conover, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 8th day of May, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12565 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,219]**

### Gemini Gas Compressors Corpus Christi, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 19, 2003, in response to a worker petition filed March 10, 2003, on behalf of workers at Gemini Gas Compressors, Corpus Christi, Texas.

The petitioning group of workers is covered by an earlier petition filed on March 17, 2003 (TA–W–51,180) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 6th day of May 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12570 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,796]**

### General Electric Company, GE Lighting Inc. Tungston Products Plant, Euclid, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 6, 2003 in response to a worker petition filed on behalf of workers at General Electric Company, GE Lighting Inc., Tungston Products Plant, Euclid, Ohio.

The petitioning group of workers is covered by an active certification issued on February 27, 2003 and which remains in effect (TA–W–50,647). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 2nd day of May 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12567 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,433]**

### Kingston Technology, Fountain Valley, California; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 7, 2003, in response to a petition filed on behalf of workers at Kingston Technology, Fountain Valley, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 8th day of May, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12563 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–51,382]**

### OEM Worldwide, Spearfish, South Dakota; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 1, 2003, in response to a petition filed by a company official on behalf of workers at OEM Worldwide, Spearfish, South Dakota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of May, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12562 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–41,185]**

### Pittsburgh Logistics Systems, A Subsidiary of Quadrivius, Inc. on Location at LTV Steel Corp.; Independence, Ohio; Notice of Negative Determination of Reconsideration on Remand

The United States Court of International Trade (USCIT) remanded for further investigation of the Secretary of Labor's negative determination in *Former Employees of Pittsburgh Logistics Systems* v. *U.S. Secretary of Labor* (02–00387).

The petition listed Pittsburgh Logistics Systems (PLS) in Rochester, Pennsylvania and PLS in Independence, Ohio as the workers' firm and relevant subdivision. Administrative Record (AR), 3. Therefore, Department of Labor (DOL) investigated both facilities for possible certification. AR, 15. DOL's initial denial of the petition for certification of both worker groups was issued March 29, 2002 and published in the **Federal Register** on April 17, 2002 (67 FR 18923). DOL determined neither facility fulfilled the requirements because, in short, the workers' firm did not produce an article as required by section 222(a)(3) of the Act. AR 17–19.

The PLS Independence, Ohio worker group requested administrative reconsideration on April 29, 2002 as they felt ''that Department of Labor's decision is in error because: Our jobs were eliminated due to lack of work caused by LTV Steel Co., Inc., shutdown due to imports.'' AR 25. DOL denied the request, finding that LTV's closure ''is not relevant'' because the ''subject workers may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm otherwise related to the subject firm by control.'' AR 28. DOL's denial was issued on May 30, 2002 and published in the **Federal Register** on June 12, 2002 (67 FR 40341).

Mr. Robert Weintzetl, on behalf of the other petitioners, appealed to the CIT on May 29, 2002, and, on September 5, 2002, attorneys at King & Spalding representing the petitioners *pro bono* filed an amended complaint. On February 28, 2003, the CIT issued an Order remanding the case to DOL ''for redetermination consistent with this Opinion of whether the plaintiffs were eligible for TAA benefits, either as 'production' workers or 'service' workers.'

On the point of whether the employees should be certified as production workers, the CIT ordered DOL to clarify on remand why the work of ''manag[ing] warehousing and distribution'' and ''managing traffic and processing of freight invoices'' makes a petitioner ineligible for certification as a production worker. *Former Employees of Pittsburgh Logistics Systems* v. *United States Secretary of Labor,* Slip Op. 03–21, February 28, 2003, pg. 13. Regarding whether the employees should be certified as service workers, the CIT found that DOL had failed to fully investigate and articulate the ''corporate control'' issue that is part of DOL's service worker analysis.

Section 222(a)(3) of the Trade Act establishes that DOL must not certify a group unless ''increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.'' The phrase of particular importance in this case is ''articles produced by such workers' firm or an appropriate subdivision thereof.'' Under this requirement, DOL must deny certification to a worker group unless the workers' firm or an appropriate subdivision of the workers' firm produced an import-impacted article.

DOL's interpretation of the phrase ''appropriate subdivision thereof'' is limited to related or affiliated firms; cannot be expanded to encompass two unaffiliated firms. This interpretation of the phrase ''appropriate subdivision'' is consistent with section 222(a)(1) which requires DOL to consider whether a significant number of workers have been separated from ''the workers' firm or appropriate subdivision of the firm.'' Because the Act clearly limits ''appropriate subdivision'' to just ''the'' workers' firm in the first requirement, DOL understands Congress to have intended to similarly limit ''appropriate subdivision'' in the immediately following requirements.

This limitation is reflected in the regulations. The regulatory definition of ''firm'' states, ''[a] firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm.'' 29 CFR 90.2. This language allows the phrase ''workers' firm'' to include more than one entity, but only to the extent that those multiple entities are ''controlled or substantially beneficially owned by substantially the same persons.'' Section 90.2 of the regulations defines ''appropriate subdivision'' as one of three types of subdivisions, none of which permit the inclusion of a worker group employed by one firm to be included as within the ''appropriate subdivision'' of another, unaffiliated firm. The first two types of ''appropriate subdivisions'' are expressly limited to one ''firm'': either ''an establishment in a multi-establishment firm'' or ''a distinct part or section of an establishment (whether or not the firm has more than one establishment) where the articles are produced.'' ''One definition of establishment * * * is 'a permanent organization,' and would encompass any subdivision *up to* the size of the entire corporation.'' (Emphasis added.) *International Union, UAW* v. *Marshall,* 584 F.2d 390 (D.C. Cir. 1978).

The third type of ''appropriate subdivision'' encompasses ''auxiliary facilities operated in conjunction with (whether or not physically separate from) production facilities.'' This broadens the term ''appropriate subdivision'' to include a facility that does not produce an article. However, this definition ''has connotations that a

subdivision can never be larger than a single 'establishment.' The definition's limited use of 'auxiliary facilities' implies that any physically separate operation may be part of a subdivision only if it is merely auxiliary and used in conjunction with the main production unit.'' *Lloyd* v. *U.S. Dep't of Labor,* 637 F.2d 1267, 1274 (9th Cir. 1980). In *Lloyd,* the CIT stated that the word ''auxiliary'' implies that a facility will only be deemed an appropriate subdivision if it is a subsidiary part of a firm that is producing an article. In addition, the phrase '''[o]perated in conjunction with' implies that the auxiliary facility must be run by the same firm as the production facility or facilities.'' *Id.*

**Production Worker Analysis**

When a worker group applies for assistance, the fundamental test DOL applies is whether the workers' firm or an appropriate subdivision of the workers' firm produced an import-impacted article during the relevant period. If the worker group produces such an article, then they are deemed ''production workers.''

Because an ''appropriate subdivision'' is limited to the ''workers' firm'' and Section 90.2 of the regulations permits the inclusion of multiple entities within the term ''firm'' only if they are affiliated entities, on remand DOL conducted additional investigation of the relationship between PLS and LTV. The investigation indicates that substantially the same persons do not control PLS and LTV. Supplemental Administrative Record (SAR) 43. No corporate official of one company is also a board member or officer of the other (or of Quadrivius). SAR 42. Substantially the same persons do not own PLS and LTV. LTV was a publicly owned company. PLS is a wholly owned subsidiary of Quadrivius. SAR 36. Quadrivius is a privately owned company. SAR 39. After LTV's bankruptcy, PLS continued business. AR 25. The contract between LTV and PLS indicates that they are separate corporations. SAR 108. Therefore, DOL finds that LTV and PLS are not ''controlled or substantially beneficially owned by substantially the same persons.'' 29 CFR 90.2. They are independent business entities and as the word ''firm'' is defined by section 90.2, ''workers' firm'' cannot mean both LTV and PLS.

DOL has considered which factors of employment exercised by a firm establish that it is ''the'' workers' firm. DOL has consistently determined that the critical employment factor is which firm was obligated to pay the employee during the relevant period. Because PLS was so obligated, DOL has determined that PLS is ''the'' workers' firm. SAR 40. Furthermore, the contract establishes that ''PLS shall hire and use its own employees to provide the services described in this contract'' (SAR 108) and ''PLS is supplying its own employees, which is (*sic*) controls and directs for employment purposes.'' SAR 111. PLS ''hired and fired'' the relevant worker group. SAR 40. Therefore, DOL finds that the petitioners are employees of PLS and cannot be certified as an appropriate subdivision (or as part of an appropriate subdivision) of LTV.

The CIT Opinion ordered DOL ''to explain to petitioners how their work was unrelated to production, not merely state that it was.'' This suggests that the CIT wants DOL to change the test of whether one qualifies as a production worker to whether the workers' tasks are ''related'' to production. Such a change would violate section 222(a)(3) which, as stated earlier, requires actual production by the workers' firm or an appropriate subdivision of the workers' firm. In addition, this change conflicts with previous CIT decisions that support DOL's determination that the test for production must involve the transformation of a thing into something ''new and different.'' *Nagy* v. *Donovan,* 6 CIT 141, 145, 571 F.Supp. 1261, 1264 (1983).

DOL thoroughly investigated and could not find any evidence that any employees of PLS or Quadrivius actually produced any articles. AR 4, AR 11, AR 13, SAR 39. The workers' job descriptions indicate that from their workstations in LTV's Independence, Ohio facility, they managed the transportation of items to and from LTV's production facility in Cleveland, Ohio. SAR 20–28. Because there is no evidence that the petitioners transformed anything into something ''new and different,'' they are not eligible for certification as production workers.

**Service Worker Analysis**

On the issue of whether the petitioners should be certified as service workers, the petitioners argued that they should be certified because: they performed their job inside an LTV facility, they were supervised by LTV employees, and they were employees of LTV prior to their employment with PLS. (LTV's employees at the Independence, Ohio facility did not produce any articles. AR 16, SAR 37, SAR 48, SAR 50, SAR 68. They were certified as a third type of appropriate subdivision because they provided services to LTV's Cleveland, Ohio production facility. SAR 57.)

As stated earlier, when a worker group applies for assistance, the fundamental test called for by section 222 of the Trade Act is whether the workers' firm or an appropriate subdivision of the workers' firm produced an import-impacted article during the relevant period. If there is no evidence that the worker group applying for certification produced an import-impacted article, it may only be certified if: (1) The workers' separations were caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control; (2) the reduction in the demand for their services originated at a production facility whose workers independently met the statutory criteria for certification; and (3) the reduction directly related to the product impacted by imports. *Abbott* v. *Donovan,* 6 CIT 92, 100–101, 570 F.Supp. 41, 49 (1983). This ''elaborated'' analysis is necessary to determine whether a worker group has met the regulatory requirements of a type three appropriate subdivision: that the worker groups' facility is ''auxiliary'' and ''operates in conjunction with a production facility.'' This analysis is customarily called the ''support service'' analysis, but it is actually not much different than the fundamental test that DOL applies to every application for certification.

The first requirement (''the workers' separation were caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control'') focuses on the definition of ''firm'' as it is used in the fundamental test. For multiple entities to be considered a single workers' firm, such entities must be ''controlled or substantially beneficially owned by substantially the same persons.'' 29 CFR 90.2. As discussed earlier, PLS and LTV are not controlled or substantially beneficially owned by substantially the same persons. The regulations establish that DOL cannot certify the petitioners as service workers because their firm is unaffiliated with a firm that produces or produced an import-impacted article.

**Conclusion**

Whether the performance of services by the petitioners is related or unrelated to production is not relevant to determining their eligibility for certification. Under section 222 of the Act, what is relevant is whether the workers' firm or an appropriate subdivision of the workers' firm

produces an article. The workers' firm in this case is PLS. As acknowledged in the Court's Opinion, the relevant petitioners in this remand action ''were employed by Pittsburgh Logistics Systems, Inc. (PLS) and worked on-site at LTV's facilities in Independence, Ohio.'' Slip Op. 2. PLS is a subsidiary of Quadrivius. SAR 36. Neither PLS not Quadrivius are affiliated with LTV. SAR 43. The evidence clearly establishes that PLS and Quadrivius do not produce, directly or through an appropriate subdivision, an import-impacted article. ''Once DOL concludes that the workers'' employer was not a firm that produced an import-impacted article, it may conclude that the workers are not eligible for assistance without further analysis.'' *Stanley Smith* v. *U.S. Sec'y of Labor,* 20 CIT 201, 204, 967 F.Supp.512, 515 (1996). Because the petitioners are employees of a firm or subdivision that does not produce a trade-impacted article, they are not eligible for certification.

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for the former workers of PLS.

Signed at Washington, DC, this 5th day of May, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12566 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–51,598]**

### Potash Corporation of Saskachewan, Inc., Information Systems Department, North Brook, Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 25, 2003, in response to a worker petition filed on behalf of workers at Potash Corporation of Saskatchewan, Inc., Information Systems Department, North Brook, Illinois, and Aurora, North Carolina.

The petition regarding the investigation was not signed by three workers employed at each of the locations indicated in the petition and has therefore been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of May, 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12564 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–51,439]**

### Royal Hosiery Company, Inc., Granite Falls, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 7, 2003 in response to a petition filed by a company official on behalf of workers at Royal Hosiery Company, Inc., Granite Falls, North Carolina.

The company official has requested that the investigation be terminated.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 1st day of May, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12571 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–51,603]**

### Sony Semiconductor San Antonio, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 25, 2003, in response to a petition filed on behalf of workers at Sony Semiconductor, San Antonio, Texas.

The workers who filed the petition have 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 6th day of May 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12572 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–51,656]**

### Springs Industries Customer Service Center Lancaster, South Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 1, 2003, in response to a petition filed on behalf of workers at Springs Industries, Customer Service Center, Lancaster, South Carolina.

The petitioners were separated from the subject firm more than one year prior to the date on 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 6th day of May 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12574 Filed 5–19–03; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

## Employment and Training Administration

**[TA–W–51,046]**

### Western Geco, LLC, Houston, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2003 in response to a worker petition filed on behalf of workers at Western Geco, LLC, Houston, Texas.

The Department issued a negative determination applicable to the petitioning group of workers on April 9, 2003 (TA–W–51,251). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 1st day of May 2003.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12568 Filed 5–19–03; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–50,425]**

### Willing B. Wire Willingboro, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 2, 2003 in response to petition filed by a state agency representative on behalf of workers at Willing B. Wire, Willingboro, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 6th day of May, 2003.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 03–12557 Filed 5–19–03; 8:45 am]

**BILLING CODE 4510–30–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that six meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

*Folk and Traditional Arts:* June 2, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists categories). This meeting will be closed.

*Media Arts:* June 10–13, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists categories). A portion of this meeting, from 1 p.m. to 2 p.m. on June 13th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on June 10th through 12th, and from 9 a.m. to 1 p.m. and 2 p.m. to 3:30 p.m. on June 13th, will be closed.

*Design:* June 17, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists categories). A portion of this meeting, from 2 p.m. to 3 p.m., will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 2 p.m. and from 3 p.m. to 6 p.m., will be closed.

*Opera:* June 24–25, 2003, Room 714 (Creativity category). A portion of this meeting, from 3:15 p.m. to 4:15 p.m. on June 25th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on June 24th, and from 9 a.m. to 3:15 p.m. and 4:15 p.m. to 4:45 p.m. on June 25th, will be closed.

*Opera:* June 25, 2003, Room 714 (Services to Arts Organizations and Artists category). This meeting will be closed.

*Visual Arts:* June 24–26, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists categories). A portion of this meeting, from 1 p.m. to 2 p.m. on June 26th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 24th and 25th, and from 9 a.m. to 1 p.m. and from 2 p.m. to 5 p.m., will be closed.

The closed meetings and portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: May 14, 2003.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 03–12528 Filed 5–19–03; 8:45 am]

**BILLING CODE 7537–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–302]**

### Florida Power Corporation, Crystal River Unit 3 Nuclear Generating Plant; Exemption

**1.0 Background**

Florida Power Corporation (the licensee) is the holder of Facility Operating License No. DPR–72, which authorizes operation of the Crystal River Unit 3 Nuclear Generating Plant (Crystal River). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Citrus County, Florida.

**2.0 Request/Action**

Title 10 of the Code of Federal Regulations (10 CFR) Section 55.59 requires that a facility's licensed operator requalification program be conducted for a continuous period not to exceed 2 years (24 months) and upon conclusion must be promptly followed, pursuant to a continuous schedule, by successive requalification programs. Each 2-year requalification program must include a biennial comprehensive written examination and annual operating tests.

By letter dated March 6, 2003, the licensee requested a one-time exemption under 10 CFR 55.11 from the schedule requirements of 10 CFR 55.59. Specifically, for Crystal River, the licensee has requested a one-time extension from December 31, 2004, to February 28, 2005, for completing the current licensed operator requalification program. The next requalification program period would begin March 1, 2005, and continue for 24 months to February 28, 2007, with successive periods running for 24 months. This requested exemption would allow an extension of 2 months beyond the 24-month requalification program schedule required by 10 CFR 55.59.

**3.0 Discussion**

Pursuant to 10 CFR 55.11, the Commission may, upon application by

an interested person, or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 55 when the exemptions are authorized by law and will not endanger life or property and are otherwise in the public interest. The exemption being requested for Crystal River is to alleviate potential scheduling difficulties associated with administering requalification examinations and completing the requalification program at the end of the 2004 calendar year. Moving the end of the requalification program to February 28, 2005, would: (1) Minimize the fall refueling outage impact on requalification examination development; (2) minimize the potential impact from any fall refueling outage extensions; (3) minimize the scheduling and resource impact from both the Thanksgiving and Christmas holidays; (4) minimize the potential scheduling and resource impact of any examination remediation or retesting requirements during the holidays; and (5) minimize the potential impact from future bargaining unit negotiations, which occur periodically in the fourth calendar quarter.

Although the 24-month schedule requirement of 10 CFR 55.59 at Crystal River would be exceeded, operator performance continues to be satisfactory, as demonstrated by the operators' strong performance during the recent end-of-cycle requalification examinations. Granting this exemption will allow Crystal River to continue with safe plant operations without undue hardship to plant personnel and Crystal River licensed operators.

**4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 55.11, granting an exemption to the licensee from the schedule requirements in 10 CFR 55.59, by allowing Crystal River a one-time extension in the allowed time for completing the current licensed operator requalification program, is authorized by law and will not endanger life or property and is otherwise in the public interest. Therefore, the Commission hereby grants Florida Power Corporation an exemption on a one-time only basis from the schedule requirement of 10 CFR 55.59, to allow the completion date for the current licensed operator requalification program for the Crystal River Unit 3 Nuclear Generating Plant to be extended from December 31, 2004, to February 28, 2005. The next requalification program period would begin March 1, 2005, and continue for 24 months to February 28, 2007, with successive periods running for 24 months.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 25069).

This exemption is effective upon issuance and expires on February 28, 2005.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 14th day of May 2003.

**Bruce A. Boger,**

*Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–12598 Filed 5–19–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 70–7001 and 70–7002]**

## Paducah Gaseous Diffusion Plant, Portsmouth Gaseous Diffusion Plant, United States Enrichment Corporation; Notice of Request for Certificate Renewal and Opportunity for Comment

### I. Receipt of Application and Availability of Documents

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC or the Commission) has received by letters dated April 11, 2003, applications from the United States Enrichment Corporation (USEC) for the renewal of the certificates of compliance for the gaseous diffusion plants (GDPs) located near Paducah, Kentucky and Piketon, Ohio. The NRC issued the initial certificates of compliance for the GDPs on November 26, 1996, and assumed regulatory oversight for the GDPs on March 3, 1997. The GDPs were last issued renewed certificates of compliance on January 29, 1999. Those certificates expire December 31, 2003. The USEC renewal requests are for a five-year period, extending from the current expiration date of December 31, 2003, to December 31, 2008. The USEC applications for renewal contain a revised Depleted Uranium Management Plan and a revised Decommissioning Funding Plan but do not contain any other changes to the existing Application and Safety Analysis Report. The USEC application for the renewal of the Paducah Gaseous Diffusion Plant is based on USEC's previous Application, as revised through Revision 81 dated April 11, 2003, and USEC's previous Compliance Plan, as revised through Revision 9 dated December 1, 2000. No additional changes to the Application or Compliance Plan are requested. The USEC application for the renewal of the Portsmouth Gaseous Diffusion Plant is based on USEC's previous Application, as revised through Revision 65 dated April 11, 2003, and USEC's previous Compliance Plan, as revised through Revision 11 dated January 31, 2003. No additional changes to the Application or Compliance Plan are requested.

Copies of the renewal application for certification (except for classified and proprietary portions which are withheld in accordance with 10 CFR 2.790, ''Availability of Public Records'') are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* Documents may 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 20854.

### II. Notice of Comment Period

Any interested party may submit written comments on the application for renewal of the certificate of compliance for either the Paducah plant or the Portsmouth plant for consideration by the staff. To be certain of consideration, comments must be received by (insert date 30 days from day of publication).

Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Written comments on the application should be mailed to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand delivered to 11545 Rockville Pike, Rockville, MD 20852 between 7:45 a.m. and 4:15 p.m. Federal workdays. Comments should be legible and reproducible, and include the name, affiliation (if any), and address of the comment provider. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room located in Rockville, MD.

Following evaluation of USEC's applications for renewal, and any public comments received, the Commission staff will issue a written decision, and publish notice of the decision in the **Federal Register**. Upon publication of the notice of decision, any person whose interest may be affected may then request review of the decision within 30 days, pursuant to 10 CFR 76.62(c) or 76.64(d), whichever applies.

### III. Further Information

For further information you may contact Mr. Dan E. Martin, concerning the Paducah plant, at (301) 415–7254, or Mr. Michael G. Raddatz, concerning the Portsmouth plant, at (301) 415–6334, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 8th day of May 2003.

For the Nuclear Regulatory Commission.

**Margaret V. Federline,**

*Deputy Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03–12599 Filed 5–19–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 11, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows: Wednesday, June 11, 2003—4:15 p.m.—6:15 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: May 14, 2003.

**Sher Bahadur,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 03–12596 Filed 5–19–03; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Notice

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of May 19, 26, June 2, 9, 16, 23, 2003.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of May 19, 2003**

There are no meetings scheduled for the Week of May 19, 2003.

**Week of May 26, 2003—Tentative**

Wednesday, May 28, 2003

9:30 a.m.—Meeting with Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2:45 p.m.—Discussion of Management Issues (Closed—Ex. 2)

Thursday, May 29, 2003

9:30 a.m.—Briefing on Status of Revisions to the Regulatory Framework for Steam Generator Tube Integrity (Public Meeting) (Contact: Louise Lund, 301–415–3248)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2 p.m.—Briefing on Equal Employment Opportunity Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380)

**Week of June 2, 2003—Tentative**

Friday, June 6, 2003

10:00 a.m.—Discussion of Security Issues (Closed—Ex. 1)

**Week of June 9, 2003—Tentative**

Wednesday, June 11, 2003

10:30 a.m.—All Employees Meeting (Public Meeting)

1:30 p.m.—All Employees Meeting (Public Meeting)

**Week of June 16, 2003—Tentative**

There are no meetings scheduled for the Week of June 16, 2003.

**Week of June 23, 2003—Tentative**

There are no meetings scheduled for the Week of June 23, 2003.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: May 15, 2003.

**R. Michelle Schroll,**

*Acting Technical Coordinator, Office of the Secretary.*

[FR Doc. 03–12711 Filed 5–16–03; 10:36 am]

BILLING CODE 7590–01–M

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## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1079, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1079, ''Criteria for Power Systems for Nuclear Power Plants,'' is being developed to describe a method that is acceptable to the NRC staff for complying with the NRC's regulations for the design, operation, and testing of electric power

systems in nuclear power plants. The guide proposes to endorse IEEE Std. 308–2001, ''Criteria for Class 1E Power Systems for Nuclear Power Generating Stations.''

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, Office of Administration, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by July 31, 2003.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC Home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@NRC.GOV*. For technical information about Draft Regulatory Guide DG–1079, contact Mr. S.K. Aggarwal at 301–415–6005, (e-mail *SKA@NRC.GOV*).

Although a deadline is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone 301–415–4737 or (800) 397–42056; fax 301–415–3548; e-mail *PDR@NRC.GOV*. Requests for single copies of draft or final regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to 301–415–2289; e-mail *DISTRIBUTION@NRC.GOV*. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 12th day of May 2003.

For the Nuclear Regulatory Commission.

**Michael Mayfield,**

*Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.*

[FR Doc. 03–12597 Filed 5–19–03; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Collection: Scholarship for Service Program Internet Web Page, OMB No. 3206–0246

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit a request to the Office of Management and Budget (OMB). The OPM is requesting OMB to approve a collection associated with the Scholarship For Service (SFS) Program Internet Web page. Approval of the Web page is necessary to facilitate the timely registration, selection and placement of program-enrolled students in Federal agencies.

The SFS Program was established by the National Science Foundation in accordance with the Federal Cyber Service Training and Education Initiative as described in the President's *National Plan for Information Systems Protection.* This program seeks to increase the number of qualified students entering the fields of information assurance and computer security in an effort to respond to the threat to the Federal Government's information technology infrastructure. The program provides capacity building grants to selected 4-year colleges and universities to develop or improve their capacity to train information assurance professionals. It also provides selected 4-year colleges and universities scholarship grants to attract students to the information assurance field. Participating students who receive scholarships from this program are required to serve a 10-week internship during their studies and complete a post-graduation employment commitment equivalent to the length of the scholarship or one year, whichever is longer.

At present, there are 192 enrolled participants. Forty students will need permanent placement and 100 students will need internship placement in the summer 2003. Based on other programs that collect similar information, we estimate the collection of information for registering and creating an online resume to be 45 minutes to 1-hour in length of time to answer questions. We estimate the total number of hours to be 200.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please include your mailing address with your request.

**DATES:** Comments on this proposal should be received by July 19, 2003.

**ADDRESSES:** Send or deliver comments to: U.S. Office of Personnel Management, ATTN: Rob Timmins, 1900 E Street, NW., Room 1425, Washington, DC 20415–9820, E-mail: *ratimmin@opm.gov.*

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 03–12576 Filed 5–19–03; 8:45 am]

BILLING CODE 6325–38–P

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee

### Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on: Thursday, June 19, 2003, Thursday, July 10, 2003, and Thursday, July 24, 2003.

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies.

Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW., Washington, DC 20415; (202) 606–1500.

Dated: May 6, 2003.

**Mary M. Rose,**

*Chairperson, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 03–12577 Filed 5–19–03; 8:45 am]

**BILLING CODE 6325–49–P**

## SECURITIES AND EXCHANGE COMMISSION

### Existing Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Rule 17g–1 [17 CFR 270.17g–1], SEC File No. 270–208, OMB Control No. 3235–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 350l–3520], the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17g–1 [17 CFR 270.17g–1] under the Investment Company Act of 1940 (the ''Act'') governs the fidelity bonding of officers and employees of registered management investment companies (''funds'') and their advisers. Rule 17g–1 requires, in part, the following:

• *Independent Directors' Approval Requirements.* At least annually, the independent directors of a fund must approve the form and amount of the fund's fidelity bond. Rule 17g–1 provides a schedule of minimum amounts for fidelity bonds based on a fund's size. The independent directors also must approve the amount of any premium paid for any ''joint bond'' covering multiple funds or certain other affiliates of the fund.

• *Fidelity Bond Content Requirements.* The fidelity bond must provide that it shall not be cancelled, terminated or modified except upon 60-days written notice to the affected party and to the Commission. In the case of a joint bond, this 60-day notice also must be given to each fund and to the Commission. In addition, a joint bond must provide that the fidelity insurance company will provide all funds covered by the bond with (i) a copy of the bond and any amendments to the bond; (ii) a copy of any formal filing of a claim on the bond; and (iii) notification of the terms of the settlement on any claim prior to execution of that settlement.

• *Joint Bond Agreement Requirement.* A fund that is insured by a joint bond must enter into an agreement with all other parties insured by the joint bond regarding recovery under the joint bond.

• *Required Filings with the Commission.* Upon execution of a fidelity bond or any amendment thereto, a fund must file with the Commission a copy of: (i) the executed fidelity bond; (ii) the resolution of the fund's independent directors approving the fidelity bond; and (iii) a statement as to the period for which the fidelity bond premiums have been paid. In the case of a joint bond, a fund also must file a copy of: (i) a statement showing the amount of a single insured bond the fund would have maintained under the rule had it not been named under a joint bond; and (ii) each agreement between the fund and all other insured parties. A fund also must notify the Commission in writing within 5 days of any claim and settlement on a claim made under a fidelity bond.

• *Required Notices to Directors.* A fund must notify by registered mail each member of its board of directors of (i) any cancellation, termination or modification of the fidelity bond at least 45 days prior to the effective date; and (ii) the filing or settlement of any claim under the fidelity bond when the notification is filed with the Commission.

Rule 17g–1's independent directors' annual review requirements, fidelity bond content requirements, joint bond agreement requirement and the required notices to directors seek to ensure the safety of fund assets against losses due to the conduct of persons who may obtain access to those assets. These requirements also seek to facilitate oversight of a fund's fidelity bond. The rule's required filings with the Commission are designed to assist the Commission in monitoring funds' compliance with the fidelity bond requirements.

The Commission staff estimates that approximately 4600 funds are subject to the requirements of rule 17g–1, and that on average a fund spends approximately one hour per year complying with the rule's paperwork requirements. The Commission staff therefore estimates the total annual burden of the rule's paperwork requirements to be 4600 hours.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of Commission rules. The collection of information required by rule 17g-1 is mandatory and will not be kept confidential. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection

techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: May 13, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–12605 Filed 5–19–03; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

*Extension:* Form 24F–2, SEC File No. 270–399, OMB Control No. 3235–0456.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information.

Under 17 CFR 270.24f–2, any open-end management companies (''mutual funds''), unit investment trusts (''UITs'') or face-amount certificate companies (collectively, ''funds'') that are deemed to have registered an indefinite amount of securities must, not later than 90 days after the end of any fiscal year in which it has publicly offered such securities, file Form 24F–2 with the Commission. Form 24F–2 is the annual notice of securities sold by funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year.

The Commission estimates that 7,428 funds file Form 24F–2 on the required annual basis. The average annual burden per respondent for Form 24F–2 is estimated to be two hours. The total annual burden for all respondents to Form 24F–2 is estimated to be 14,856 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information required by Form 24F–2 is mandatory. The Form 24F–2 filing that must be made to the Commission is available to the public. 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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 and (ii) Mr. Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 15, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–12606 Filed 5–19–03; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Regulation S–P, SEC File No. 270–480, OMB Control No. 3235–0537.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') request for extension of the previously approved collection of information discussed below.

#### Regulation S–P—Privacy of Consumer Financial Information

On June 22, 2000, effective November 13, 2000, the Commission adopted Regulation S–P under the Securities Exchange Act of 1934 (''Exchange Act'') to implement Title V of the Gramm-Leach-Bliley Act (''G–L–B Act'' or ''Act''). Among other things, Title V of the G–L–B Act requires that at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer of such financial institution's policies and practices with respect to disclosing nonpublic personal information to affiliates and nonaffiliated third parties (''privacy notice''). Title V of the Act also provides that, unless an exception applies, a financial institution may not disclose nonpublic personal information of a consumer to a nonaffiliated third party unless the financial institution clearly and conspicuously discloses to the consumer that such information may be disclosed to such third party; the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and the consumer is given an explanation of how the consumer can exercise that nondisclosure option (''opt out notice'').

The privacy notices required by the Act are mandatory. The opt out notices are not mandatory for financial institutions that do not share nonpublic personal information with nonaffiliated third parties except as permitted under an exception to the statute's opt out provisions. Regulation S–P implements the statute's requirements with respect to broker-dealers, investment companies, and registered investment advisers (''covered entities''). The Act and Regulation S–P also contain consumer reporting requirements. In order for consumers to opt out, they must respond to opt out notices. At any time during their continued relationship, consumers have the right to change or update their opt out status. Most covered entities do not share nonpublic personal information with nonaffiliated third parties and therefore are not required to provide opt out notices to consumers under Regulation S–P. Therefore, few consumers are required to respond to opt out notices under the rule.

Currently, there are approximately 18,500 covered entities (approximately 5,600 broker-dealers that conduct business with the general public, 5,100 investment companies, and 7,800 registered investment advisers) that must prepare or revise the annual and initial privacy notices they provide to their customers. To prepare or revise their privacy notices, each of the approximately 10,700 covered entities that is a broker-dealer or investment company requires an estimated 40 hours at a cost of $5,248 (32 hours of professional time at $160 per hour plus 8 hours of clerical or administrative time at $16 per hour) and each of the approximately 7,800 covered entities that is a registered investment adviser requires an estimated 5 hours at a cost

of $656 (4 hours of professional time at $160 per hour plus 1 hour of clerical or administrative time at $16 per hour). Thus, the total compliance burden per year is 740,000 hours (40 hours for 10,700 broker-dealers and investment companies, and 5 hours for 7,800 registered investment advisers (40 × 10,700 = 428,000, 5 × 7,800 = 39,000, and 428,000 + 39,000 = 467,000), and $57,401,600 ($5,248 × 10,700 = $56,153,600, $160 × 7,800 = $1,248,000, and $56,153,600 + $1,248,000 = $57,401,600).

It is not anticipated that covered entities will need to incur any capital or start-up cost to comply with Regulation S–P. However, covered entities generally will include initial and annual privacy notices to customers with disclosure documents or account statements that they currently receive. These statements typically are assembled and sent by organizations that specialize in mailing and distribution. The additional material might result in an increase in total annual distribution costs of approximately $2.6 million for all covered entities. This estimate is based on an average additional cost per mailing of $0.02 for 130.7 million investor accounts. The number of investor accounts assumes there are 53 million brokerage accounts, 77.3 million individual investment company shareholders, and 400,000 customers of investment advisers.

Compliance with Regulation S–P is necessary for covered entities to achieve compliance with the consumer financial privacy notice requirements of Title V of the G–L–B Act. The required consumer notices are not submitted to the Commission. Because the notices do not involve a collection of information by the Commission, Regulation S–P does not involve the collection of confidential information. Regulation S–P does not have a record retention requirement per se, although the notices to consumers it requires are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4. Please note that 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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 13, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–12607 Filed 5–19–03; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 6e–2, SEC File No. 270–177, OMB Control No. 3235–0177.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

Rule 6e–2 [17 CFR 270.6e–2] under the Investment Company Act of 1940 (''Act'') is an exemptive rule that permits separate accounts, formed by life insurance companies, to fund certain variable life insurance products. The rule exempts such separate accounts from the registration requirements under the Act, among others, on condition that they comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e–2 provides a separate account with an exemption from the registration provisions of section 8(a) of the Act if the account files with the Commission Form N–6EI–1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other sections of the Act, provided that the separate account makes certain disclosure in its registration statements, reports to contractholders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Paragraph (b)(9) of rule 6e–2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) applies only to management accounts that offer life insurance contracts subject to rule 6e–2.

Since 2000, there have been no filings under paragraph (b)(9) of rule 6e–2 by management accounts. Further, all variable life separate accounts that have filed post-effective amendments to their registration statements during this period have been structured as unit investment trusts and thus have not been subject to the requirements of paragraph (b)(9) of the rule. Therefore, since 2000, there has been no cost or burden to the industry regarding the information collection requirements of paragraph (b)(9) of rule 6e–2. In addition, there have been no filings of Form N–6EI–1 by separate accounts since 2000. Therefore there has been no cost or burden to the industry since that time.

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.

Written comments regarding the estimated burden hours should be directed to the Desk Officer for the Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and Desk Officer, Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503. Comments must be submitted to OMB within 30 day of this notice.

Dated: May 14, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–12608 Filed 5–19–03; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–26046; 812–12768]**

## Claymore Securities, Inc. and Claymore Securities Defined Portfolios; Notice of Application

May 14, 2003.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under: (i) section 6(c) of the Investment Company Act of 1940 (''Act'') for exemptions from sections 14(a) and 19(b) of the Act and from rule 19b–1 thereunder; (ii) sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act; and (iii) section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1)(F)(ii) of the Act.

**SUMMARY OF APPLICATION:** Applicants Claymore Securities Inc. (''Sponsor''), Claymore Securities Defined Portfolios (the ''Claymore Trust''), as well as any unit investment trust (''UIT'') for which the Sponsor or an entity controlling, controlled by, or under common control with the Sponsor serves as the sponsor in the future (together with the Claymore Trust, the ''Trusts'') and any presently outstanding or subsequently issued series of the Trusts (each, a ''Trust Series'') request an order: (a) under section 12(d)(1)(J) of the Act to permit each Trust Series to offer and sell to the public units (''Units'') with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii) of the Act; (b) under sections 6(c) and 17(b) for an exemption from section 17(a) of the Act to permit the Trust Series to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act; and (c) under section 6(c) of the Act for exemptions from sections 14(a) and 19(b) of the Act and rule 19b–1 under the Act to permit Units to be publicly offered without requiring the Sponsor to take for its own account or place with others $100,000 worth of Units, and to permit the Trust Series to distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

**FILING DATES:** The application was filed on January 30, 2002, and amended on May 8, 2003.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 9, 2003 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC, 20549–0609; Applicants: Nicholas Dalmaso, c/o Claymore Securities, Inc., 210 North Hall Street, Wheaton, Illinois 60187.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. (202) 942–8090).

### Applicants' Representations

1. The Sponsor, a broker-dealer registered under the Securities Exchange Act of 1934, will serve as the sponsor to the Claymore Trust and any future Trusts.[1] The Claymore Trust is a UIT registered under the Act and each Trust Series is organized under a trust indenture between the Sponsor, a banking institution or trust company as trustee (''Trustee'') and an evaluator. The Trustee, the Sponsor or an affiliate may serve as the evaluator. The evaluator, will be a ''qualified evaluator'' as defined in rule 22c–1(b)(2) under the Act. Pursuant to the trust indenture, the Sponsor will deposit into each Trust Series shares of existing registered investment companies (''Funds''), or contracts and monies for the purchase of shares of the Funds. The Funds may be closed-end or open-end investment companies or UITs. Certain of the Funds are open-end investment companies or UITs that have received exemptive relief under the Act to sell their shares at negotiated prices on an exchange (''Exchange Funds''). In addition, a Trust Series may invest a portion of its assets directly in equity securities, fixed income securities and other investment instruments (together with the Funds, the ''Securities'').

2. The purpose of each Trust Series is to provide retail investors (1) an investment with a professionally selected asset allocation model or investment theme based upon the Sponsor's assessment of the overall economic climate and financial markets, and (2) the opportunity for income and/or capital appreciation through a diversified fixed portfolio of Funds professionally selected by the Sponsor from the total population of available Funds within the various market sectors of the Sponsor's asset allocation model or consistent with the enunciated investment theme (together with any other Securities selected in accordance with the Sponsor's asset allocation model or investment theme for the particular Trust Series). Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates (''Affiliated Funds''). Applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor (''Unaffiliated Funds''). Applicants state that the Trust Series' investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) in all respects except for the sales load restriction of section 12(d)(1)(F)(ii).

3. Shares of each of the Funds (except closed-end Funds or Exchange Funds) will be purchased by or deposited into any Trust Series at their public offering price (*i.e.*, such Funds' net asset values, plus any applicable sales loads). Shares of closed-end Funds and Exchange Funds will be purchased by or deposited into a Trust Series at their market value as determined by an evaluator. Investors in the Trust Series (''Unitholders'') will pay a specified sales load to the Sponsor in connection with the purchase of their Units.

4. The Trustee may receive service fees under a rule 12b–1 plan from certain Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by the Trust Series. In such cases, the Trustee will reduce its regular fee to a Trust Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Trust Series. Any fees so rebated will be utilized by the Trust Series to absorb other bona fide Trust Series' expenses. To the extent that these fees exceed the total Trust Series' expenses, the excess will be distributed along with other income earned by the Trust Series.

[1] The Claymore Trust is currently the only existing Trust intending to rely on the requested order. Any other existing or future Trust that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

**Applicants' Legal Analysis**

*A. Section 12(d)(1) of the Act*

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if those securities represent more than 3% of the acquired company's total outstanding voting stock, more than 5% of the acquiring company's total assets, or if the securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to an acquiring company if the company and its affiliated persons own no more than 3% of an acquired company's total outstanding securities, provided that the acquiring company does not impose a sales load of more than 1.5%. In addition, the section provides that no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. A Trust Series will invest in Affiliated and Unaffiliated Funds in reliance on section 12(d)(1)(F) of the Act. If the requested relief is granted, the Trust Series will offer Units to the public with a sales load that exceeds the 1.5% limit in section 12(d)(1)(F)(ii).

4. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1), if and to the extent that such exemption is consistent with the public interest and the protection of investors.

5. Applicants have agreed, as a condition to the requested relief, that any sales charges and/or service fees charged with respect to Units of a Trust Series will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers, Inc. (''NASD'') Conduct Rules applicable to a fund of funds. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement instead of the sales load limitation in section 12(d)(1)(F)(ii). Applicants assert that the NASD's rule more accurately reflects today's regulatory environment with respect to the methods by which investment companies finance sales expenses.

6. Applicants state that, with respect to Securities issued by closed-end Funds which are traded on the open market, no front-end sales load, contingent deferred sales charges, 12b–1 fees, or other distribution fees or redemption fees will be charged in connection with the purchase or sale of the Securities by a Trust Series. Similarly, no front-end sales loads, contingent deferred sales charges or redemption fees will be assessed in connection with the purchase or sale of Securities of an Exchange Fund, but certain Exchange Funds may assess a rule 12b–1 fee. Although the Trust Series will likely incur brokerage commissions in connection with their open market purchases of Securities of closed-end Funds or Exchange Funds, these commissions will not differ from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities.

7. Applicants also agree, as a condition to the requested relief, that each Trust Series will not invest in any underlying Fund which acquires securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

*B. Section 17(a) of the Act*

1. With regard to the Trust Series' investments in Affiliated Funds, applicants request relief from section 17(a) of the Act under sections 6(c) and 17(b). Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. Applicants submit that the Trust Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Sponsor. Applicants state that purchases and redemptions of Securities of the Affiliated Funds that are open-end investment companies or UITs by a Trust Series could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provisions of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Applicants state that Securities of open-end Funds and UITs will be sold to the Trust Series at the Fund's public offering price (*i.e.*, such Fund's net asset value, plus any applicable sales loads). As a result, Applicants believe that the transactions in Securities of Affiliated Funds, including the consideration to be paid or received, will be reasonable and fair and will not involve overreaching on the part of any person involved. Furthermore, Applicants believe that the proposed transactions will be consistent with the policies of the Trust Series as recited in the registration statements for the Trust Series.

*C. Section 14(a) of the Act*

1. Section 14(a) of the Act requires in substance that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants believe that each Trust Series will comply with this requirement because the Sponsor will deposit substantially more than $100,000 of Securities in each Trust Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all of the Units of the Trust Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants submit that the Trust Series cannot rely on the rule because the Trust Series will invest all or a portion of their assets in Fund shares (or in a combination of Fund shares and other Securities) and such Fund shares and certain equity Securities are not eligible trust securities. Pursuant to section 6(c) of the Act, Applicants request an exemption from the net worth requirement of section 14(a) of the Act. Applicants state that the Trust Series and the Sponsor will comply in all

respects with the requirements of rule 14a–3, except that the Trust Series will not restrict their portfolio investments to ''eligible trust securities.''

*D. Section 19(b) of the Act*

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, excepts a UIT investing in ''eligible trust securities'' (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Trust Series do not limit their investments to ''eligible trust securities,'' the Trust Series do not qualify for the exemption in paragraph (c) of rule 19b–1. Therefore, applicants request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares, or sales of closed-end Fund shares, Exchange Fund shares, or other portfolio Securities, to be distributed to Unitholders along with the Trust Series' regular distributions. Applicants state that, in all other respects, the Trust Series will comply with section 19(b) and rule 19b–1. Applicants assert that the abuses that section 19(b) and rule 19b–1 were designed to prevent do not exist with regard to the Trust Series. Applicants state that any gains from the redemption or sale of Fund shares or other portfolio Securities would be triggered by the need to meet Trust Series' expenses or by requests to redeem Units, events over which the Sponsor and the Trust Series have no control.

*Applicants' Conditions*

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each Trust Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges and/or service fees (as those terms are defined in NASD Conduct Rule 2830) charged with respect to Units of a Trust Series will not exceed the limits set forth in NASD Conduct Rule 2830 applicable to a fund of funds (as defined in NASD Conduct Rule 2830).

3. No Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. The Trust Series and the Sponsor will comply in all respects with the requirements of rule 14a–3, except that the Trust Series will not restrict their portfolio investments to ''eligible trust securities.''

5. No Trust Series will terminate within thirty days of the termination of any other Trust Series that holds shares of one or more common Funds.

6. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that Unitholders who elect to receive Fund shares will incur any applicable rule 12b–1 fees.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–12609 Filed 5–19–03; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 68 FR 25071, May 9, 2003.

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**ANNOUNCEMENT OF ADDITIONAL MEETING:** Additional Meeting.

**A Closed Meeting was held on Thursday, May 15, 2003 at 5:30 p.m.**

Commissioner Goldschmid, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting held on Thursday, May 15, 2003 was: Litigation Matter.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the Closed Meeting. Certain staff members who had an interest in the matter also attended the Closed Meeting.

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 15, 2003.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 03–12796 Filed 5–16–03; 4:10 pm]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47856; File No. SR–NASD–2003–78]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Rule 6230 To Reduce TRACE Reporting Period

May 14, 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 May 2, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, NASD is requesting that the Commission grant accelerated approval of the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD is proposing to amend Rule 6230 to reduce the period to report a transaction in a TRACE-eligible debt security from 75 minutes to 45 minutes. Rule 6230 is one of the Trade Reporting and Compliance Engine (''TRACE'') rules. Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.[3]

* * * * *

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6230. Transaction Reporting

(a) When and How Transactions Are Reported

A member that is required to report transaction information pursuant to paragraph (b) below must report such transaction information within [one hour and fifteen]*45* minutes of the time of execution, except as otherwise provided below, or the transaction report will be ''late.'' The member must

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD corrected a typographical error in the text of the proposed rule change in a telephone conversation between Sharon K. Zakula, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Mary N. Simpkins, Special Counsel, Division of Market Regulation, Commission, on May 13, 2003.

transmit the report to TRACE during the hours the TRACE system is open (''TRACE system hours''), which are 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time. Specific trade reporting obligations during a 24-hour cycle are set forth below.

(1) Transactions Executed During TRACE System Hours

Transactions in TRACE-eligible securities executed on a business day at or after 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time must be reported within *45*[one hour and fifteen] minutes of the time of execution. If a transaction is executed on a business day less than *45*[one hour and fifteen] minutes before 6:30 p.m. Eastern Time, a member may report the transaction the next business day within *45*[one hour and fifteen] minutes after the TRACE system opens. If reporting the next business day, the member must indicate ''as/of'' and provide the actual transaction date.

(2) Transactions Executed at or After 6:30 P.M. Through 11:59:59 P.M. Eastern Time

Transactions in TRACE-eligible securities executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time must be reported the next business day within *45*[one hour and fifteen] minutes after the TRACE system opens. The member must indicate ''as/of'' and provide the actual transaction date.

(3) Transactions Executed at or After 12:00 A.M. Through 7:59:59 A.M. Eastern Time

Transactions in TRACE-eligible securities executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day within *45*[one hour and fifteen] minutes after the TRACE system opens.

(4) Transactions Executed on a Non-Business Day

Transactions in TRACE-eligible securities executed on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed, at any time during that day (determined using Eastern Time), must be reported the next business day within *45*[one hour and fifteen] minutes after the TRACE system opens. The transaction must be reported as follows: the date of execution must be the first business day (the same day the report must be made); the execution time must be ''12:01:00 a.m. Eastern Time'' (stated in military time as ''00:01:00''); and the modifier, ''special price,'' must be selected. In addition, the transaction must not be designated ''as/of''. When the reporting method chosen provides a ''special price'' memo field, the member must enter the actual date and time of the transaction in the field.

(5) Through (6) No Change.

(b) Through (f) 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, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASD Rule 6230(a) currently requires a member that is a party to a transaction in a TRACE-eligible security to report the transaction information to TRACE within 75 minutes of the time of execution.[4]

NASD is proposing to reduce the period to report from 75 minutes to 45 minutes. In Rule 6230(a), the general requirement to report transaction information within 75 minutes of the time of execution is restated as 45 minutes. In addition, NASD is proposing to amend the next-day reporting exceptions in Rules 6230(a)(1) through (4) to require that the report be filed within 45 minutes of the time the TRACE system opens instead of the current 75 minutes. Specifically, in Rule 6230(a)(1), a member *could elect* to report the next business day if a transaction occurs within 45 minutes before the TRACE system closing. If the member elects to report the following business day that the TRACE system is open, the member *must report* the transaction within 45 minutes after the TRACE system opens. In addition, in Rule 6230(a)(2) through (4), a member would be required to report transaction information for specified transactions the next business day that the TRACE system is open and would be required to do so within 45 minutes after the system's opening.

The proposed rule change, if approved, would result in important trade information reaching the market in a timelier manner, furthering NASD's goals with respect to improving transparency under TRACE, and enhancing specific TRACE reporting provisions. The goal to reduce the reporting period in TRACE has been understood by the industry for several years and has been noted as a goal in rule filings with the SEC since 1999, as well as in the SEC's first order approving the full set of the TRACE Rules.[5]

The SEC approved the current 75-minute period after several phases of discussion about the appropriate reporting period.[6] In early TRACE discussions occurring in 1998 and 1999, NASD staff recommended that the industry prepare for a 15-minute reporting period. In response to industry feedback, NASD revised its proposal to include a 60-minute period, with the caveat that NASD intended to reduce the reporting period to 15-minutes after TRACE became operational and members had acquired experience with reporting.[7]

Prior to the July 1, 2002 TRACE effective date, the SEC staff requested NASD to coordinate with the National Securities Clearing Corporation (''NSCC'') regarding the TRACE reporting initiative. Certain member firms utilizing NSCC for reporting municipal bond transactions to the Municipal Securities Rulemaking Board (''MSRB'') requested that NASD and

[4] Limited exceptions to the general requirement are stated in Rule 6230(a)(1) through (4), which provide for reporting a transaction the next business day that the TRACE system is open in certain circumstances. Specifically, in Rule 6230(a)(1), a member currently *may elect* to report a transaction the next business day that the TRACE system is open at any time within 75 minutes after the TRACE system opens, if the member executed the trade the prior business day less than 75 minutes before the TRACE system closed. (Currently, on a business day, the TRACE system is open from 8 a.m. Eastern Time to 6:30 p.m. Eastern Time to receive reports.) In Rule 6230(a)(2) through (4), members are directed how to report trades that occur (1) after TRACE system hours, (2) before TRACE system hours, or (3) on a weekend or a holiday. In each case, the member must report the transaction the next business day that the TRACE system is open within 75 minutes of the opening.

[5] Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131, 8135 (January 29, 2001) (order approving SR–NASD–99–65).

[6] Securities Exchange Act Release No. 46144 (June 28, 2002), 67 FR 44907 (July 5, 2002) (order approving SR-NASD–2002–46).

[7] Currently, NASD staff intends to recommend a further reduction in the TRACE reporting period to 15 minutes that would be effective mid-year 2004. The reduction in the TRACE reporting period would be consistent with the Municipal Securities Rulemaking Board's published plan to implement a 15-minute transaction reporting requirement for municipal securities that would take effect on July 1, 2004.

NSCC develop a TRACE reporting option so that members could utilize the same NSCC functionality for reporting transactions in TRACE-eligible securities. Because of NSCC operational issues, it became clear that firms would be precluded from reporting through NSCC unless NSCC improved its ''batch processing'' to allow for more submissions per day, and NASD adopted a slightly longer reporting period. As a result the SEC approved the NASD's proposal to extend the reporting period to 75 minutes for the initial period of reporting under TRACE. The basis for extending the period to 75 minutes was that NASD planned to reduce the reporting period substantially after TRACE became operational. Consistent with the NASD's goal of a reduced reporting period, NSCC has publicly committed to support the proposed 45-minute reporting requirement.

The NASD proposal to reduce the reporting period at this time to 45 minutes is supported by statistical evidence from TRACE data. The data indicates that the industry generally has achieved technological readiness to implement the proposed rule change. For example, in the fourth quarter of 2002, eighty-three percent (83%) of all trades reported to TRACE were reported within 45 minutes of execution. NASD will work with firms that are currently not able to report trades within 45 minutes generally between the date of the SEC's approval of the proposed rule change, if so approved, and October 1, 2003, the planned date of implementation, to assist such firms to be ready and able to comply with a 45-minutes reporting period on October 1, 2003.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[8], which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change, if approved, will provide NASD, as the self-regulatory organization designated to regulate the over-the-counter markets, with heightened capabilities to regulate and provide surveillance of the debt securities markets to prevent fraudulent and manipulative acts and practices, and will improve transparency by reducing the period between the time of execution of a transaction and the dissemination of the transaction information, for securities subject to dissemination, for the protection of customers and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. NASD believes that accelerated approval will benefit investors and member firms as follows. Member firms will receive prior notification, by several months, of a clear, fixed, certain deadline to implement a modest reduction in the reporting period. Firms will have sufficient notice to enable firms' operational staffs to make any necessary systems changes or enhancements to comply with the reduced reporting period on October 1, 2003. As noted above, NASD is aware that some firms may have greater operational and technical difficulties in making the operational enhancements to support a 45-minute reporting period. NASD is interested in working with these firms, and believes that an accelerated approval and a fixed implementation date would encourage such firms to begin addressing 45-minute reporting concerns earlier in 2003.

In addition, NASD believes that approval of this provision on an accelerated basis to create a date certain for implementation is likely to improve price transparency for the benefit of investors by effectively reducing the reporting period prior to the time this rule change would take effect on October 1, 2003. Specifically, members have indicated that they will begin to modify operations and systems, as necessary, as soon as the membership is certain that the reporting period will be reduced, and to what extent, and is able to ascertain the effective date of the new reporting requirement. As firms reduce their reporting windows, reported prices will begin to be disseminated more quickly.

Moreover, NASD believes that members have been aware that the NASD would reduce the TRACE reporting period because NASD, the SEC, and the industry have publicly discussed reduction of the reporting period for several years. TRACE has now been operational for almost nine months, and NASD's proposal to reduce the reporting period would not take effect until October 1, 2003, which is 15 months from the date of implementation of TRACE. The Commission is not, at this time, granting accelerated approval of the proposed rule change.

NASD intends to respond to comments filed with the SEC regarding the proposed reduction.

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 proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR–NASD–2003–78 and should be submitted by June 10, 2003.

[8] 15 U.S.C. 78o–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–12611 Filed 5–19–03; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47836; File No. SR–NYSE–2003–16]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Arbitration

May 12, 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 May 9, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by NYSE. NYSE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an extension of rule 600(g).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change is intended to:

- Extend until September 30, 2003,[5] rule 600(g) that was approved by the Commission for a six-month period ending May 12, 2003.[6]

The Exchange's statement of purpose is contained in the Commission's Approval Order. In that Approval Order the Commission stated: ''The Exchange's Director of Arbitration will monitor the progress of the above described litigation *[NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.* v. *Judicial Council of California,* No. C 02 3485 (N.D. Cal.)] and determine whether there is a continuing need for the waiver option.''[7]

The above litigation, in which the Exchange and NASD Dispute Resolution, Inc. sought a declaratory judgment that the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations (the ''California Standards'') are preempted by Federal law, has not been concluded. On November 12, 2002, Judge Samuel Conti dismissed the action on Eleventh Amendment grounds.[8] A Notice of Appeal from Judge Conti's decision has been filed with the United States Court of Appeals for the Ninth Circuit.[9] The Exchange's Director of Arbitration has determined that, in the absence of a final judicial determination or legislative resolution of the preemption issue, there is a continuing need for the waiver option.

2. Statutory Basis

The Exchange states that the proposed changes are consistent with section 6(b)(5) of the Act[10] in that they promote just and equitable principles of trade by ensuring that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has 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

The NYSE has stated that because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days (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[11] and rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to rule 19b–4(f)(6)(iii) under the Act,[13] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission recently approved an extension of a similar pilot rule of the National Association of Securities Dealers, Inc. (''NASD''), contained in its Code of Arbitration Procedure, until September 30, 2003. Release No. 34–47631 (April 3, 2003), 68 FR 17713 (April 10, 2003). By proposing to extend its own pilot rule until September 30, 2003, the Exchange seeks to conform the duration of the NASD and Exchange pilot programs.

[6] Release No. 34–46816 (November 12, 2002), 67 FR 69793 (November 19, 2002).

[7] *Id.* at 69794.

[8] *NASD Dispute Resolution, Inc.* v. *Judicial Council of California,* 232 F. Supp. 2d 1055 (N.D. Cal. 2002).

[9] In another case, *Mayo* v. *Dean Witter Reynolds, Inc., Morgan Stanley Dean Witter & Co. dba Morgan Stanley Dean Witter, and Does 1–50,* No. C–01–20336 JF, 2003 WL 1922963 (N.D. Cal., April 22, 2003), Judge Jeremy Fogel recently held that application of the California Standards to the Exchange and other self-regulatory organizations is preempted by the Act, the comprehensive system of federal regulation of the securities industry established pursuant to the Act, and the Federal Arbitration Act.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[14] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors with a mechanism to resolve disputes with broker '' dealers. During the period of this extension, the Commission and NYSE will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. NYSE–2003–16 and should be submitted by June 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 03–12457 Filed 5–19–03; 8:45 am]

**BILLING CODE 8010–01–P**

[14] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47843; File No. SR–PCX–2002–54]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to a One Tick Step Up Requirement for Auto-Ex in Certain Option Issues

May 13, 2003.

## I. Introduction

On August 27, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 adopt a one-tick step up requirement for market makers who are participating on the Exchange's Automatic Execution System (''Auto-Ex''). On March 19, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published in the **Federal Register** on April 9, 2003.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

## II. Description

The Exchange is proposing to adopt PCX Rule 6.87(e)(8) relating to the Exchange's Auto-Ex System for options trading. Currently, options market makers who are logged on to Auto-Ex are obligated to meet certain requirements with respect to their use of Auto-Ex. These obligations are set forth in PCX Rule 6.87(e)(1)–(7). The Exchange is proposing to adopt a new rule that would require Lead Market Makers (''LMMs'') participating on Auto-Ex to step up and execute certain orders at prices better than the Exchange is disseminating under specified conditions.

PCX Rule 6.87(i) currently allows the Options Floor Trading Committee (''OFTC'') to require market makers to step up at least one trading increment to the national best bid or offer (''NBBO'') for electronic orders in selected issues.[4] The proposed rule change would impose an alternative step up requirement on LMMs. Under the proposal, if the OFTC has not exercised its authority to require step up to the NBBO, the Exchange will set the Auto-Ex System to require LMMs to step up and execute trades in selected issues at the NBBO if the LMM is quoting a price within one tick of the NBBO as disseminated by another exchange. If the LMM is quoting a price that is more than one trading increment inferior to the price being disseminated by another options exchange, the order will default for manual representation in the trading crowd.

Proposed PCX Rule 6.87(e)(8) only will apply to non-broker-dealer orders for ten contracts or less in option issues that are ranked in the 120 most actively traded equity options based on the total number of contracts traded nationally for a specified month based on volume as reported by the Options Clearing Corporation. In addition, the rule will only apply to orders in option series that are not designated as LEAPS pursuant to PCX Rule 6.4(e).

The Exchange's determination of whether an equity option ranks in the top 120 most active, nationally-traded issues will be based on volume statistics reported by the Options Clearing Corporation. The Exchange's determination of whether an equity option ranks in the top 120 most active issues will be based on volume statistics for the three calendar months of trading activity beginning four months prior to the current month. The Exchange has represented that it intends to notify its Members of the issues that are designated to be in the top 120 via a regulatory bulletin that will be published at the beginning of each month.

## III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[5] which requires among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act No. 47615 (April 2, 2003), 68 FR 17420.

[4] Further, pursuant to PCX Rule 6.87(i), the OFTC may designate that an order will default for manual representation in the trading crowd if the order would be executed at a price that is more than one trading increment away from the PCX market price.

[5] 15 U.S.C. 78f(b)(5).

public interest.[6] The Commission believes that requiring LMMs to step up one tick to match the NBBO in the most highly traded options series should increase the ability of investors to gain access to the best bids and offers available in those options series.

## IV. Conclusion

For all of the aforementioned reasons, 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.

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PCX–2002–54), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–12610 Filed 5–19–03; 8:45 am]

**BILLING CODE 8010–01–P**

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47646; File No. SR–Phlx–2003–18]**

## 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 Equal Firm Quotation Size and AUTO–X Guarantees for Customer and Broker-Dealer Orders

April 8, 2003.

**Editorial Note:** Due to numerous footnote errors, this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Monday, April 14, 2003 at 68 FR 17976–17979.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2003, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The proposed rule change has been filed by the Phlx as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act.[3] On April 7, 2003, the Phlx filed Amendment No. 1 to the proposed rule change.[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 implement an options program to be firm for, and to automatically execute eligible orders against, the Exchange's disseminated size for both customer and broker-dealer orders. Specifically, the Exchange proposes to amend Exchange Rule 1082, Firm Quotations, to provide that all Phlx options quotations would be firm for all incoming customer and broker-dealer orders for their full disseminated size.

The Exchange further proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),[5] to provide automatic executions for eligible customer and off-floor broker-dealer orders up to the Exchange's disseminated size, subject to a maximum guaranteed AUTO–X size of 250 contracts. Options on the Nasdaq-100 Index Tracking Stock (''QQQ''SM)[6] would continue to have a maximum guaranteed AUTO–X size of 2,000 contracts in the first two near term expiration months, and 1,000 contracts for all other expiration months.[7]

Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

**Firm Quotations**

Rule 1082. (a) No change.

(b) Except as provided in paragraph (c) of this Rule, all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer *and broker-dealer* orders at the disseminated price in an amount up to the disseminated size. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute orders presented to them at such price up to the disseminated size in accordance with Rule 1015, or, if the responsible broker or dealer is representing (as agent) a limit order, such responsible broker or dealer shall be responsible (as agent) up to the size of such limit order, but may be responsible as principal for all or a portion of the excess of the disseminated size over the size of such limit order to the extent provided in Rule 1015.

(c) No change.

(d) [In accordance with paragraph (d)(l)(ii) of the SEC Quote Rule, the quotation size for a disseminated price with respect to an order for the account of a broker or dealer (''broker-dealer order'') shall be one (1) contract (''quotation size''), and all quotations made available by the Exchange and displayed by quotation vendors shall be firm for broker-dealer orders at the disseminated price in an amount up to the quotation size. The quotation size for broker-dealer orders provided in this paragraph (d) shall be periodically published by the Exchange. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute broker-dealer orders at such price up to the quotation size. (e)] If responsible brokers or dealers receive an order to buy or sell a listed option at the disseminated price

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, Commission, dated April 4, 2003 (''Amendment No. 1''). In Amendment No. 1, Phlx deleted certain proposed language stating that ''[t]he minimum guaranteed AUTO–X size is 1 contract, and the current maximum AUTO–X size is 250 contracts, except for QQQ options''; retained current language that the minimum and maximum guaranteed AUTO–X sizes for each option will be posted in the Phlx's website; and retained current language that there be a minimum guaranteed AUTO–X size and maximum guaranteed AUTO–X size, as determined by the specialist and subject to approval of the Options Committee.

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[6] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of Nasdaq and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[7] *See* Securities Exchange Act Release No. 46531 (September 23, 2002), 67 FR 61370 (September 30, 2002) (SR–Phlx–2002–47).

in an amount greater than the disseminated size [(for customer orders) or the quotation size (for broker-dealer orders)], such responsible broker or dealer shall, within thirty (30) seconds of receipt of the order, (i) execute the entire order at the disseminated price (or better), or (ii) execute that portion of the order equal to the disseminated size [(in the case of a customer order) or the quotation size (in the case of a broker-dealer order)] at the disseminated price (or better), and revise its bid or offer.

*Commentary:*

*.01. For purposes of this Rule 1082, the term ''broker-dealer orders'' includes orders for the account(s) of market makers on another exchange and Registered Options Traders (''ROTs'') on the Exchange.*

* * * * *

**Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)**

Rule 1080. (a)–(b) No change.

(c) AUTO–X.—AUTO–X is a feature of AUTOM that automatically executes eligible market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO–X and partially manually.

The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any such restriction on the use of AUTO–X approved by the Options Committee will be clearly communicated to Exchange membership and AUTOM users through an electronic message sent via AUTOM and through an Exchange information circular. Such restriction would not take effect until after such communication has been made.

Currently, the Exchange's maximum allowable AUTO–X guarantee is 250 contracts. With respect to options on the Nasdaq-100 Index Tracking Stock (''QQQ'')SM, orders of up to 2,000 contracts in the first two (2) near term expiration months, and 1,000 contracts for all other expiration months, are eligible for AUTO–X.

For each option, there shall be a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size. Such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders], as determined by the specialist and subject to the approval of the Options Committee.

The Exchange shall provide automatic executions for eligible *customer and broker-dealer* orders up to the Exchange's disseminated size as defined in Exchange Rule 1082, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (up to a size of 250 contracts).

- If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.
- If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.
- If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist.

The minimum and maximum guaranteed AUTO–X size applicable to each option shall be posted on the Exchange's Web site.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(i)–(v) No change.

(d)–(j) No change.

Commentary

01–.04 No change.

.05 Off-floor broker-dealer limit orders delivered through AUTOM must be represented on the Exchange Floor by a floor member. Off-floor broker-dealer orders delivered via AUTOM shall be for a minimum size of one (1) contract. Off-floor broker-dealer limit orders are subject to the following other provisions:

(i)–(iii) No Change

(iv) [(a) The minimum guaranteed AUTO–X size shall be at least 10 contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the ''Top 120 Options''). A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation (''OCC'').

(b) With respect to all other options, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO–X on an issue-by-issue basis, subject to the approval of the Options Committee.

(c) The AUTO–X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee. (v)] Off-floor broker-dealer AUTO–X eligible limit orders may be eligible for the Exchange's National Best Bid or Offer (''NBBO'') Step-Up Feature on an issue-by-issue basis, subject to the approval of the Options Committee.

* * * * *

**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 Phlx 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 Phlx proposes to require that all Phlx quotations would be firm for all incoming customer and broker-dealer orders for their full disseminated size, thus eliminating any distinction between customer orders and broker-dealer orders respecting firm quotation size. The Phlx also proposes to provide that all Phlx guaranteed AUTO–X sizes would be the same for both customer and broker-dealer orders.

a. Firm Quotation Size

Currently, Exchange Rule 1082(b) requires that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders at the disseminated price in an amount up to the disseminated size. Exchange Rule 1082(d) sets forth a different ''quotation size'' of one contract applicable to broker-dealer orders, which is distinguished from the ''disseminated size'' for which responsible brokers or dealers are firm for customer orders.[8] The Exchange proposes to amend Exchange Rule 1082(b) to require that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders and broker-dealer orders at the disseminated price in an amount up to the disseminated size, thus eliminating any distinction between customer orders and broker-dealer orders with respect to the size for which Exchange option quotations are firm.

The Exchange would also delete any references to ''quotation size'' and ''broker-dealer'' from Exchange Rule 1082(e). This would be to require all quotations made available by the Exchange and displayed by quotation vendors to be firm at the disseminated price in an amount up to the disseminated size for both customers and broker-dealers. The Phlx represents that the purpose of this provision is to provide both customers and broker-dealers with full access to the entire disseminated size of the Exchange's quotations. Thus, the Exchange proposes to eliminate any distinction between the size for which its quotes are firm, whether for customers or broker-dealers, including market makers on other exchanges and Registered Options Traders (''ROTs'').

b. Automatic Executions at the Disseminated Size for Eligible Customer and Broker-Dealer Orders

In November 2002, the Commission approved an Exchange proposal to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist and subject to approval of the Options Committee, on an issue-by-issue basis.[9] The Exchange now proposes to amend Exchange Rule 1080(c) by deleting the provision that such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders. Corresponding sections of the Commentary to Exchange Rule 1080 concerning AUTO–X eligibility and different guaranteed AUTO–X sizes for customers and broker-dealers would also be deleted. This would result in automatic executions for both eligible customer orders and eligible broker-dealer orders at the Exchange's disseminated size.

The Exchange proposes to eliminate the distinction among customer orders and broker-dealer orders respecting AUTO–X guarantees. In order to ensure that customer and broker-dealer orders receive the same AUTO–X size guarantee, the Phlx proposes to delete the current provisions in Exchange Rule 1080, Commentary .05 requiring a minimum guaranteed AUTO–X size of ten contracts for off-floor broker-dealer orders in Top 120 options. Additionally, the current Commentary includes a provision that, with respect to all other options, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO–X on an issue-by-issue basis, subject to the approval of the Options Committee. The Exchange proposes to delete this provision in order to enable all eligible broker-dealer orders to be treated the same as eligible customer orders with respect to the Exchange's guaranteed AUTO–X size.

Finally, the Exchange proposes to delete from the Commentary the provision that the AUTO–X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee.

c. Conclusion

The Exchange believes that this proposed ''one size fits all'' approach, as set forth in subsections a. and b. above, should enable the Exchange to compete for broker-dealer orders by ensuring that there would be no distinction between broker-dealer and customer orders with respect to: (i) the size for which the Exchange is firm at its disseminated price; and (ii) the Exchange's guaranteed AUTO–X size. Furthermore, the Exchange believes that the proposal should enhance the transparency of its markets and result in a larger number of orders automatically executed.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by requiring Exchange specialists and ROTs to be firm for up to the Exchange's disseminated size for all orders, and providing automatic executions at the same guaranteed size for all eligible orders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary 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 either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such

[8] Rule 11Ac1–1(d)(1)(ii) under the Act provides that an exchange or association may establish by rule and periodically publish a quotation size, which shall not be for less than one contract, for which responsible brokers or dealers who are members of such exchange or association are obligated under paragraph (c)(2) of this section to execute an order to buy or sell a listed option for the account of a broker or dealer that is in an amount different from the quotation size for which it is obligated to execute an order for the account of a customer. 17 CFR 240.11Ac1–1(d)(1)(ii).

[9] *See* Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR–Phlx–2002–39).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6)[13] thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change become operative immediately upon filing so that the Exchange may remain competitive with other exchanges with similar rules in effect.

The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date and make the proposed rule change operative immediately upon filing, in order to allow the Phlx to compete for broker-dealer orders by removing any distinction between broker-dealer and customer orders with respect to the size for which the Exchange is firm at its disseminated price and the Exchange's guaranteed AUTO–X size.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, 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–2003–18 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–9034 Filed 4–11–03; 8:45 am]

**Editorial Note:** Due to numerous footnote errors, this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Monday, April 14, 2003 at 68 FR 17976–17979.

[FR Doc. R3–9034 Filed 5–19–03; 8:45 am]

BILLING CODE 1505–01–D

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–47647; File No. SR–Phlx–2003–20]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a License Fee for Transactions in DIAMONDS® Exchange Traded Funds

April 8, 2003.

**Editorial Note:** Due to numerous footnote errors, this document is being reprinted in its entirety. It was originally printed in the **Federal Register** on Monday, April 14, 2003 at 68 FR 17979–17982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Summary of Equity Charges to adopt a license fee of $0.00025 per share per trade side for sides greater than 500 shares, with no maximum fee per trade side charged to Non-PACE Customers[3] and Electronic Communications Networks (''ECNs''),[4] and a license fee of $0.0005 per share per trade side, with no maximum fee per trade side charged to specialists for transactions on the Phlx in the DIAMONDS® Exchange Traded Funds (''DIAMONDS'').[5] The Exchange also proposes to make minor, technical changes to its equity fee schedule to make corresponding references to the proposed fees. All other equity charges currently assessed by the Phlx will be imposed where applicable.[6]

The Exchange proposes to implement this fee as of April 1, 2003, the date that

[3] PACE is the acronym for the Exchange's Automated Communication and Execution System, which is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. *See* Exchange Rules 229 and 229A.

[4] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

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[6] These charges may include equity transaction charges, an equity floor brokerage assessment, an equity floor brokerage transaction fee, an off-Exchange trade information fee, an SEC fee, a remote information access fee, an Electronic Communications Network fee, an outbound Inter-Market Trading System (''ITS'') fee and a net inbound ITS credit. Additionally, the PACE Specialist charge does not apply because specialists are not eligible for further PACE volume discounts. *See* Securities Exchange Act No. 44259 (May 4, 2001), 66 FR 23962 (May 10, 2001) (SR–Phlx–2001–41).

it began trading in the DIAMONDS.[7]

Text of the proposed rule change is set forth below. New text is in italics. Deleted text is in brackets.

**Summary of Equity Charges (p 1/3)*—Equity Transaction Charge I**

[Based on total shares per transaction with the exception of specialist trades and PACE trades.[1]]

| Monthly transaction value | Rate per share |
|---|---|
| First 500 shares | $0.00 |
| Next 2,000 shares | 0.0075 |
| Next 7,500 shares | 0.005 |
| Remaining shares | 0.004 |

$50 maximum fee per trade side.

License Fee

SPDRs, Standard & Poor's Depositary Receipts**

Customer Non-PACE and Electronic Communications Network[E] (''ECN'') License Fee:

$0.00025 per share per trade side for sides greater than 500 shares

No maximum fee per trade side

Specialist License Fee:

$0.00035 per share per trade side

No maximum fee per trade side

*DIAMONDS® Exchange Traded Funds***

*Customer Non-PACE and Electronic Communications Network*[E] (''ECN'') License Fee:

*$0.00025 per share per trade side for sides greater than 500 shares*

*No maximum fee per trade side*

*Specialist License Fee:*

*$0.0005 per share per trade side*

*No maximum fee per trade side*

See Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to $1,000.

* Not applicable to transactions in Nasdaq-100 Index Tracking Stock℠ (see page 4 for fees).

**Summary of Equity Charges (p 2/3)*—PACE Specialist Charge[2] I**

$.20 per PHLX Specialist Trade against PACE Executions (Not applicable to PACE trades on the opening)

Equity Floor Brokerage Assessment I

$250 monthly charge[3]

Equity Floor Brokerage Transaction Fee I

$.05 per 100 shares or fraction thereof, for floor broker executing transactions for their own member firms.

SEC Fee

The amount shall be determined by Section 31 of the Securities Exchange Act of 1934.

Off-Exchange Trade Information Fee I

$.10 per DOT trade

Remote Information Access Fee I

$300.00 per month

Electronic Communications Network[E] (''ECN'') Fee

$2,500.00 per month (in lieu of equity transaction charges)

Outbound ITS Fee I (also applicable to transactions in Nasdaq-100 Index Tracking Stock℠)[4]

For PACE orders sent over ITS with the customer information attached:

| | |
|---|---|
| 500 shares or less | $0.60 per 100 shares |
| 501 to 4,999 shares | 0.30 per 100 shares |

**Summary of Equity Charges (p 3/3)**

Net Inbound ITS Credit (also applicable to transactions in Nasdaq-100 Index Tracking Stock ℠)[5]

$0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed over the number of outbound ITS shares sent and executed on a monthly basis.

See Appendix A for additional fees.

I denotes fee eligible for monthly credit of up to $1,000.

* Not applicable to transactions in Nasdaq-100 Index Tracking Stock℠ (see next page for fees).

[E] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter (''OTC'') market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: Any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

[7] The license fees will not be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

Any fees, credits, discounts and other charges in the Exchange's fee schedule which are based upon an equity specialist's specialist activity apply to competing specialists.

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[1] However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound commitment, when such outbound ITS commitment reflects the PACE order's clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment.

[2] This charge does not apply to transactions in Nasdaq-100 Index Tracking Stock℠ [and] SPDRs *and DIAMONDS®.*

[3] Applies to each member who derives at least 80% of gross income generated from Phlx floor based activities from his/her floor brokerage business conducted on the Exchange. Floor brokerage business conducted on the Exchange includes orders that are received on the Phlx, even if those orders are executed on an exchange other than the Phlx. The 5% floor brokerage assessment is waived until Dec. 31, 2003 and is scheduled to be reinstated Jan. 1, 2004.

[4] This fee will only apply when the specialist sends an order received over PACE to ITS and receives an execution, if the specialist used the PACE customer's clearing information on the outbound ITS commitment.

[5] This credit will include all inbound and outbound ITS executions, including both PACE and non-PACE and both proprietary and customer commitments.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to adopt a license fee that will apply to trading DIAMONDS on the Exchange. The Exchange recently determined to begin trading DIAMONDS. The license fees should help off-set licensing fees incurred by the Exchange associated with the trading of these products on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes that charging members that trade these products a licensing fee is an equitable means of recovering a portion of the licensing fees incurred by the Exchange.[10]

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2003–20 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–9035 Filed 4–11–03; 8:45 am]

**Editorial Note:** Due to numerous footnote errors, this document is being reprinted in its

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] With regard to the distinction between Customer PACE and Non-PACE license fees, the Exchange states that it is consistent with its current practice to not impose customer charges for equity transactions delivered through PACE, but to impose customer charges for Non-PACE executions. *See, e.g.,* Securities Exchange Act Release Nos. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR–Phlx–2003–06); 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR–Phlx–2001–57); and 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR–Phlx–2000–103). Also, consistent with its current practice, the Exchange charges customer transaction fees and specialist transaction fees at different rates. *See, e.g.,* Securities Exchange Act Release Nos. 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR–Phlx–2001–57); 47109 (December 30, 2002), 68 FR 841 (January 7, 2003) (SR–Phlx–2002–78); and 42332 (January 12, 2000), 65 FR 3517 (January 21, 2000) (SR–Phlx–2000–59).

[11] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

entirety. It was originally printed in the **Federal Register** on Monday, April 14, 2003 at 68 FR 17979–17982.

[FR Doc. R3–9035 Filed 5–19–03; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF STATE

**[Public Notice 4349]**

### Advisory Committee on International Economic Policy Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9 a.m. to 12 noon on Wednesday, June 4, 2003 in Suite 602, Elliott School of International Affairs, George Washington University, 1957 E Street NW, Washington, DC 20052. The meeting will be hosted by Assistant Secretary of State for Economic and Business Affairs E. Anthony Wayne and Committee Chairman R. Michael Gadbaw.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. Proposed topics for the March 6 meeting are rebuilding Iraq and subcommittee reports.

The public may attend these meetings as seating capacity allows. The media are welcome but discussions are off the record. For individuals interested in attending, please provide your name, title, company, or other affiliation, if appropriate, to the Advisory Committee Executive Secretariat by fax (202) 647–5936 (Attention: Gwendolyn Jackson); Tel: (202) 647–0847; or e-mail: (*jacksongl@state.gov*) by May 30, 2003.

For further information about the meeting, please contact Eliza Koch, ACIEP Secretariat, Office of Economic Policy and Public Diplomacy, Bureau of Economic and Business Affairs, U.S. Department of State, Room 3526, 2201 C Street NW, Washington, DC 20520, Tel (202) 647–1310.

Dated: May 15, 2003.

**Eliza Koch,**

*ACIEP Secretariat, Office of Economic Policy and, Public Diplomacy Bureau of Economic Affairs, Department of State.*

[FR Doc. 03–12677 Filed 5–19–03; 8:45 am]

BILLING CODE 4710–07–P

## DEPARTMENT OF STATE

**[Public Notice 4189]**

### Overseas Security Advisory Council (OSAC) Meeting Notice: Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on June 24 and 25, 2003 at the Boeing Company, Arlington, Virginia. Pursuant to section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a global threat overview, and other discussions involving sensitive and classified information, and corporate proprietary/security information, such as private sector physical and procedural security policies and protective programs and the protection of U.S. business information overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 202–663–0533.

Dated: May 8, 2003.

**Joe D. Morton,**

*Director of the Diplomatic Security Service, Department of State.*

[FR Doc. 03–12651 Filed 5–19–03; 8:45 am]

BILLING CODE 4710–24–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Fitness Determination of Valley Air Express, Inc.

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 2003–5–16), Docket OST–02–13159.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Valley Air Express, Inc., fit, willing, and able to provide scheduled passenger operations as a commuter air carrier under 49 U.S.C. 41738.

*Responses:* Objections and answers to objections should be filed in Docket OST–02–13159 and addressed to the Department of Transportation Dockets, SVC–124.1, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than May 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: May 13, 2003.

**Read C. Van De Water,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 03–12548 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review Greater Rockford Airport Rockford, IL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Greater Rockford Airport Authority for the Greater Rockford Airport under the provisions 49 U.S.C. 47501 *et. seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Greater Rockford Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before November 4, 2003.

**EFFECTIVE DATES:** The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is May 8, 2003. The public comment period ends July 7, 2003.

**FOR FURTHER INFORMATION CONTACT:** Prescott C. Snyder, Airports Environmental Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois 60018. [Telephone Number (847) 294–7538/Fax Number (847) 294–7046] Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for the Greater Rockford Airport are in

compliance with applicable requirements of Part 150, effective May 8, 2003. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 4, 2003. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The Greater Rockford Airport Authority submitted to the FAA on April 7, 2003, noise exposure maps, descriptions and other documentation, which were produced during the Greater Rockford Airport's FAR Part 150 Noise Compatibility Study, April 2003. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Greater Rockford Airport Authority. The specific documentation determined to constitute the noise exposure maps includes information found in Appendix F, Noise Modeling Methodology as well as the submittal letter, maps and certification found in the beginning of the April 2003 FAR Part 150 Noise Compatibility Study Update for Greater Rockford Airport. The noise exposure maps and certification follow page NCP–6 in the submission. They are the 2002 Existing Noise Exposure Map and 2008 Noise Compatibility Program Noise Exposure Map. The FAA has determined that these maps for the Greater Rockford Airport are in compliance with applicable requirements. This determination is effective on May 8, 2003. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consolation has been accomplished.

The FAA has formally received the noise compatibility program for Greater Rockford Airport, also effective on May 8, 2003. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 4, 2003.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposured maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations.

Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Greater Rockford Airport Authority, Airport Manager's Office, 60 Airport Drive, Rockford, Illinois 61109.

Illinois Department of Transportation, Division of Aeronautics, One Langhorne Bond Drive, Capital Airport, Springfield, Illinois 62707.

Copies of the FAR Part 150 Noise Compatibility Program documents are also available for public review during normal business hours at the following locations:

Rockford City Council Clerk, Rockford City Hall, 425 East State Street, Rockford, Illinois 61104.

Rockford Public Library, 215 North Wyman, Rockford, Illinois 61101.

Winnebago County Courthouse, County Clerk's Office, 400 West State Street, Rockford, Illinois 61101.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Chicago, Illinois, on May 8, 2003.

**Phillip M. Smithmeyer,**

*Manager, Chicago Airports District Office, FAA Great Lakes Region.*

[FR Doc. 03–12490 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2003–29]**

### Petitions for Exemption; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of dispositions of prior petitions for exemption.

**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 dispositions of certain petitions previously received. 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.

**FOR FURTHER INFORMATION CONTACT:** Sandy Buchanan-Sumter (202) 267–7271, Vanessa Wilkins (202) 267–8029,or 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 14, 2003.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### Dispositions of Petitions

*Docket No.:* FAA–2002–14166.
*Petitioner:* Kent W. Ewing.
*Section of 14 CFR Affected:* 14 CFR 91.109(a).
*Description of Relief Sought/ Disposition:* To permit Kent W. Ewing to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft Bononza, Baron and Travel Air airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, January 27, 2003, Exemption No. 7961.*

*Docket No.:* FAA–2002–14098.
*Petitioner:* Brian Daniel.
*Section of 14 CFR Affected:* 14 CFR 61.109(d)(2)(i).
*Description of Relief Sought/ Disposition:* To permit Brian Daniel to apply for a private pilot certificate with rotorcraft category and gyroplane class rating without meeting the night cross-country flight training requirement. *Grant, January 27, 2003, Exemption No. 7417A.*

*Docket No.:* FAA–2000–8337.
*Petitioner:* Alaska's Lake Clark Inn (ALCI).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit ALCI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, January 17, 2003, Exemption No. 7426A.*

*Docket No.:* FAA–2002–12484.
*Petitioner:* Dynamic Aviation Group, Inc. (Dynamic).
*Section of 14 CFR Affected:* 14 CFR 137.53(c)(2).
*Description of Relief Sought/ Disposition:* To permit Dynamic to conduct aerial applications of insecticides or pheromones from aircraft not equipped with a load jettisoning system. *Grant, January 16, 2003, Exemption No. 7827B.*

*Docket No.:* FAA–2000–8454.
*Petitioner:* United Air Lines, Inc. (United).
*Section of 14 CFR Affected:* 14 CFR 121.434(c)(1)(ii).
*Description of Relief Sought/ Disposition:* To permit United to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing. *Grant, January 16, 2003, Exemption No. 6570D.*

*Docket No.:* FAA–2000–8525.
*Petitioner:* United Air Lines, Inc.
*Section of 14 CFR Affected:* 14 CFR 121.135(a)(3).
*Description of Relief Sought/ Disposition:* To permit United to use electronic digital technology to document the revision level in lieu of printing the last revision date on each page of each manual required under § 121.133. *Grant, January 16, 2003, Exemption No. 6612C.*

*Docket No.:* FAA–2001–9672.
*Petitioner:* Hangar 10, Inc.
*Section of 14 CFR Affected:* 14 CFR 119.3.
*Description of Relief Sought/ Disposition:* To permit Hangar 10 to operate certain Convair-Liner 340 airplanes with a maximum payload greater than 7,500 pounds in all-cargo service under 14 CFR part 135 rather than under 14 CFR part 121. *Denial, January 13, 2003, Exemption No. 7951.*

*Docket No.:* FAA–2001–9594.
*Petitioner:* Edwards & Associates, Inc. (Edwards).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Edwards to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, January 13, 2003, Exemption No. 7524A.*

*Docket No.:* FAA–2001–9593.
*Petitioner:* TNT Leasing Company, Inc. (TNT).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2)
*Description of Relief Sought/ Disposition:* To permit TNT to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, January 13, 2003, Exemption No. 7525A.*

*Docket No.:* FAA–2001–8743.
*Petitioner:* Beaver Air Taxi, L.L.C. (Beaver Air).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Beaver Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, January 13, 2003, Exemption No. 7517A.*

*Docket No.:* FAA–2002–14147.
*Petitioner:* Helicorp, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Helicorp to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, January 13, 2003, Exemption No. 7947.*

*Docket No.:* FAA–2002–14105.
*Petitioner:* Michael S. Friedman.
*Section of 14 CFR Affected:* 14 CFR 91.109(a).
*Description of Relief Sought/ Disposition:* To permit Michael S. Friedman to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in Beechcraft Bonanza, Baron, and Travel Air airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, January 9, 2003, Exemption No. 7950.*

*Docket No.:* FAA–2003–14204.
*Petitioner:* Abilene Aero, Inc. (Abilene).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Abilene to

operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, January 13, 2003, Exemption No. 7948.*

*Docket No.:* FAA–2002–14137.
*Petitioner:* United Parcel Service of America, Inc. (UPS).
*Section of 14 CFR Affected:* 14 CFR 121.344(f).
*Description of Relief Sought/ Disposition:* To permit UPS to operate eight Airbus Industrie 300–600 (A300–600) airplanes manufactured after August 18, 2002, without those airplanes being equipped with a digital flight data recorder capable of recording parameter (a)(84) in accordance with the range, accuracy, resolution, and recording interval specified in Appendix M to part 121. *Grant, January 6, 2003, Exemption No. 7940.*

*Docket No.:* FAA–2002–13887.
*Petitioner:* Henry D. Canterbury.
*Section of 14 CFR Affected:* 14 CFR 91.109(a) and (b)(3).
*Description of Relief Sought/ Disposition:* To permit Henry D. Canterbury to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual control. *Grant, January 3, 2003, Exemption No. 7941.*

*Docket No.:* FAA–2001–8786.
*Petitioner:* Lynden Air Cargo (LAC).
*Section of 14 CFR Affected:* 14 CFR 121.344.
*Description of Relief Sought/ Disposition:* To permit LAC to operate five Lockheed Martin 382G Hercules aircraft (L382G) (registration Nos. N401LC, N402LC, N403LC, N404LC, and N405LC; serial Nos. 4606, 4698, 4590, 4763, and 5025) under part 121 without equipping each aircraft with an approved flight data recorder. *Grant, January 21, 2003, Exemption No. 6921C.*

*Docket No.:* FAA–2001–8754.
*Petitioner:* Everts Air Fuel, Inc. (Everts).
*Section of 14 CFR Affected:* 14 CFR 91.9(a).
*Description of Relief Sought/ Disposition:* To permit Everts to operate its McDonnell Douglas DC–6 aircraft (registration Nos. N451CE, N251CE, N444CE, and N888DG) at a 5-percent-increased zero fuel weight and landing weight for operating all-cargo aircraft to provide supplies to people in isolated villages in Alaska. *Grant, January 27, 2003, Exemption No. 4296J.*

*Docket No.:* FAA–2002–13834.
*Petitioner:* Richard L. Flechsig.
*Section of 14 CFR Affected:* 14 CFR 121.383(c).
*Description of Relief Sought/ Disposition:* To permit Richard L. Flechsig to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, January 2, 2003, Exemption No. 7939.*

*Docket No.:* FAA–2002–14080.
*Petitioner:* Air 1st Aviation Companies of Oklahoma, Inc. (Air 1st).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Air 1st to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24, 2002, Exemption No. 7938.*

*Docket No.:* FAA–2000–8050.
*Petitioner:* Alexandria Aviation, Inc. (AAI).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit AAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24, 2002, Exemption No. 7937.*

*Docket No.:* FAA–2000–8140.
*Petitioner:* Alaska Island Air, Inc. (AIA).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit AIA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24 2002, Exemption No. 7936.*

*Docket No.:* FAA–2000–7992.
*Petitioner:* Hartley, Inc., dba Branch River Air Service (Branch River).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Branch River to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24, 2002, Exemption No. 7396A.*

*Docket No.:* FAA–2000–8142.
*Petitioner:* J.R. Aviation, Inc. (JRA).
*Section of 14 CFR Affected:* 14 CFR 135.143 (c)(2).
*Description of Relief Sought/ Disposition:* To permit JRA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24, 2002, Exemption No. 7423A.*

*Docket No.:* FAA–2000–8215.
*Petitioner:* Telesis TransAir, Inc. (TTI).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit TTI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, December 24, 2002, Exemption No. 7391B.*

*Docket No.:* FAA–2002–11712.
*Petitioner:* Franklin Peter Toups.
*Section of 14 CFR Affected:* 14 CFR 61.65(a)(1) and 61.153(d)(1).
*Description of Relief Sought/ Disposition:* To permit Mr. Toups, whose airman certificate (No. 439880504) was revoked on September 28, 1990, to take a single checkride to obtain his airline transport pilot certificate and instrument rating without first retaking the private and commercial pilot practical tests. *Denial, January 13, 2003, Exemption No. 7952.*

*Docket No.:* FAA–2001–10969.
*Petitioner:* Andrew R. Young.
*Section of 14 CFR Affected:* 14 CFR 61.65(d)(1).
*Description of Relief Sought/ Disposition:* To permit Mr. Young to apply for an instrument-airplane rating having logged at least 10 hours of cross-country flight time as pilot in command (PIC) in an airplane instead of having logged at least 50 hours of cross-country flight time as PIC, of which at least 10 hours are in airplanes. *Denial, December 18, 2002, Exemption No. 7935.*

*Docket No.:* FAA–2001–10191.
*Petitioner:* United States Air Force (USAF).
*Section of 14 CFR Affected:* 14 CFR 91.209(a)(1) and (b).
*Description of Relief Sought/ Disposition:* To permit the USAF to conduct night-vision-goggle lights-out training in certain military operations areas. *Grant, January 24, 2003, Exemption No. 7960.*

*Docket No.:* FAA–2002–14041.
*Petitioner:* American Airlines (AAL).
*Section of 14 CFR Affected:* 14 CFR 121.313(j)(1).
*Description of Relief Sought/ Disposition:* To permit AAL to operate 15 Airbus Industries A300–B4–605R (A–300) airplanes after April 9, 2003. *Denial, February 7, 2003, Exemption No. 7970.*

*Docket No.:* FAA–2002–13988.
*Petitioner:* AirTran Airways, Inc. (AirTran).
*Section of 14 CFR Affected:* 14 CFR 121.313(J).
*Description of Relief Sought/ Disposition:* To permit AirTran to operate 12 McDonnell Douglas DC–9 airplanes after April 9, 2003. *Denial, February 7, 2003, Exemption No. 7969.*

*Docket No.:* FAA–2001–11097.
*Petitioner:* Business Jet Services, LTD (BJS).
*Section of 14 CFR Affected:* 14 CFR 135.145.
*Description of Relief Sought/ Disposition:* To permit BJS to place turbojet airplanes in service under part 135 without conducting proving tests. *Denial, January 31, 2003, Exemption No. 7967.*

*Docket No.:* FAA–2001–9033.
*Petitioner:* Silverhawk Aviation, Inc. (Silverhawk).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Silverhawk to operate certain aircraft under part 135 without a TSC–C112 (Mode S) transponder installed on those aircraft. *Grant, February 7, 2003, Exemption No. 7499A.*

*Docket No.:* FAA–2001–9105.
*Petitioner:* Ameristar Jet Charter, Inc. (Ameristar).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Ameristar to operate certain aircraft under part 135 without a TSC-C112 (Mode S) transponder installed on those aircraft. *Grant, February 7, 2003, Exemption No. 7500A.*

*Docket No.:* FAA–2001–9081.
*Petitioner:* Helicopter Experts, Inc. (HEI).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit HEI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 7, 2003, Exemption No. 7497A.*

*Docket No.:* FAA–2001–8740.
*Petitioner:* Helicopter AirTransport, Inc. (HATI).
*Section of 14 CFR Affected:* 14 CFR 133.45(e)(1).
*Description of Relief Sought/ Disposition:* To permit HATI to conduct Class D rotorcraft-load combination operations with an Agusta A109E certificated in the normal category under 14 CFR part 27. *Grant, February 5, 2003, Exemption No. 7486A.*

*Docket No.:* FAA–2002–14012.
*Petitioner:* The Blue Angels.
*Section of 14 CFR Affected:* 14 CFR 91.117(a) and (b), 91.119(c), and 91.303(c), (d), and (e).
*Description of Relief Sought/ Disposition:* To permit The Blue Angels to conduct demonstration rehearsals involving low-level, high-speed, and aerobatic flight, subject to certain conditions and limitations. *Grant February 5, 2003, Exemption No. 4504G.*

*Docket No.:* FAA–2000–8436.
*Petitioner:* FAA Technical Center.
*Section of 14 CFR Affected:* 14 CFR 91.117(a), 91.119(c), 91.159(a), and 91.303(e).
*Description of Relief Sought/ Disposition:* To permit the FAA Technical Center to conduct flight operations in support of its research and development projects without meeting certain FAA regulations governing aircraft speed, minimum safe altitudes, cruising altitudes for flights conducted under visual flight rules, and aerobatic flight. *Grant, February 6, 2003, Exemption No. 6883B.*

*Docket No.:* FAA–2000–8486.
*Petitioner:* Hyannis Air Service, Inc. dba Cape Air/Nantucket Airlines.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit HAS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 7, 2003, Exemption No. 7492A.*

*Docket No.:* FAA–2002–13995.
*Petitioner:* Blue Water Aviation, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.152(a).
*Description of Relief Sought/ Disposition:* To permit Blue Water Aviation to operate its Canadair Challenger 601–1A aircraft (CL–601) under part 135 without installing on the aircraft a digital flight data recorder capable of recording all required parameters. *Denial, February 12, 2003, Exemption No. 7978.*

*Docket No.:* FAA–2003–14323.
*Petitioner:* Air Transport International LLC (ATI).
*Section of 14 CFR Affected:* 14 CFR 121.313(j)(1).
*Description of Relief Sought/ Disposition:* To permit ATI to operate its fleet of McDonnell Douglas DC–8 aircraft after April 9, 2003, that do not meet the safety requirements set forth in 14 CFR 25.795(a). *Denial, February 12, 2003, Exemption No. 7977.*

*Docket No.:* FAA–2003–14422.
*Petitioner:* Trans States Airlines, Inc. (TSA).
*Section of 14 CFR Affected:* 14 CFR 121.313(j)(1).
*Description of Relief Sought/ Disposition:* To permit TSA to operate its fleet of BAE Systems Limited Jetstream 4100 aircraft after April 9, 2003, that do not meet the safety requirements set forth in 14 CFR 25.795(a). *Denial, February 12, 2003, Exemption No. 7975.*

*Docket No.:* FAA–2002–13274.
*Petitioner:* China Airlines, Ltd. (CAL).
*Section of 14 CFR Affected:* 14 CFR 61.77(a) and (b) and 63.23(a) and (b).
*Description of Relief Sought/ Disposition:* To permit CAL airmen who operate certain U.S.-registered aircraft that are leased to a non-U.S. citizen, for carrying persons or property for compensation or hire, to be eligible for a special purpose pilot authorization and a special purpose flight engineer certificate, without holding a current foreign license or certificate issued by a foreign contracting state to the Convention on International Civil Aviation. *Grant, February 12, 2003, Exemption No. 7980.*

*Docket No.:* FAA–2002–13747.
*Petitioner:* James T. Northington.
*Section of 14 CFR Affected:* 14 CFR 121.383(c).
*Description of Relief Sought/ Disposition:* To permit James T. Northington to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, February 10, 2003, Exemption No. 7973.*

*Docket No.:* FAA–2002–13938.
*Petitioner:* Walter P. Sullivan.
*Section of 14 CFR Affected:* 14 CFR 121.383(c).
*Description of Relief Sought/ Disposition:* To permit Walter P. Sullivan to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, February 10, 2003, Exemption No. 7974.*

*Docket No.:* FAA–2000–8093.
*Petitioner:* Headquarters Air Force Flight Standards Agency.
*Section of 14 CFR Affected:* 14 CFR 91.177(a)(2) and 91.179 (b)(1).
*Description of Relief Sought/ Disposition:* To permit the Air Force to conduct low-level operations without complying with en route minimum altitudes for flight under instrument flight rules (IFR) or direction of flight requirements for IFR en route segments in uncontrolled airspace. *Grant, February 11, 2003, Exemption No. 4371H.*

*Docket No.:* FAA–2001–10356.
*Petitioner:* U.S. Army Special Operations Command (USASOC).
*Section of 14 CFR Affected:* 14 CFR 91.177(a)(2) and 91.179(b)(1).
*Description of Relief Sought/ Disposition:* To permit properly equipped USASOC aircraft to conduct low-level operations without complying with en route minimum altitudes for flight under instrument flight rules (IFR) or direction of flight requirements for IFR en route segment in uncontrolled airspace. *Grant, February 11, 2003, Exemption No. 7631A.*

*Docket No.:* FAA–2003–14453.

*Petitioner:* DFW Air Transport, Inc. (DFW).

*Section of 14 CFR Affected:* 14 CFR 35.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit DFW to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7984.*

*Docket No.:* FAA–2003–14350.

*Petitioner:* Helicopter Experts, Inc.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Helicopter Experts to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7986.*

*Docket No.:* FAA–2003–14331.

*Petitioner:* Sea Island Aviation International, Inc.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Sea Island to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7989.*

*Docket No.:* FAA–2000–8463.

*Petitioner:* Peninsula Airways, Inc. (PenAir).

*Section of 14 CFR Affected:* 14 CFR 91.323(b)(4).

*Description of Relief Sought/ Disposition:* To permit PenAir to operate one Grumman G–21A Goose aircraft at a maximum weight of 8,920 pounds, which exceeds that aircraft's maximum certificated weight. *Grant, February 27, 2003, Exemption No. 6963B.*

*Docket No.:* FAA–2001–9282.

*Petitioner:* Air Transport Association of America, Inc. (ATA).

*Section of 14 CFR Affected:* 14 CFR 63.39(b)(1) and (2), and 121.425(a)(2)(i) and (ii).

*Description of Relief Sought/ Disposition:* To permit ATA-member airlines and other qualifying part 121 certificated holders conducting part 121 approved flight engineer training programs to meet the certification requirements of § 63.39(b)(1) and (2) concurrently with the qualification requirements of § 121.425(a)(2)(i) and (ii) in a single flight check. *Grant, February 27, 2003, Exemption No. 4901H.*

*Docket No.:* FAA–2001–8762.

*Petitioner:* Regional Airline Association (RAA).

*Section of 14 CFR Affected:* 14 CFR 91.203.

*Description of Relief Sought/ Disposition:* To permit RAA-member airlines to temporarily operate certain U.S.-registered aircraft in domestic airline operations without the airworthiness certificate or certificate of aircraft registration, or both, onboard the aircraft. *Grant, February 27, 2003, Exemption No. 5515F.*

*Docket No.:* FAA–2001–8528.

*Petitioner:* Popular Rotorcraft Association, Inc. (PRA).

*Section of 14 CFR Affected:* 14 CFR 91.319(a).

*Description of Relief Sought/ Disposition:* To permit PRA and its member flight instructors to conduct pilot and flight instructor training in an experimental gyroplane for compensation or hire. *Grant, February 27, 2003, Exemption No. 5209H.*

*Docket No.:* FAA–2001–9445.

*Petitioner:* Aurora Aviation.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Aurora to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed on those aircraft. *Grant, February 27, 2003, Exemption No. 7544A.*

*Docket No.:* FAA–2003–14245.

*Petitioner:* Air Transport Association of America, Inc. (ATA).

*Section of 14 CFR Affected:* 14 CFR 121.311(f) and 121.391(d).

*Description of Relief Sought/ Disposition:* To permit ATA member airlines and other similarly situated certificate holders operating under part 121 to continue to locate a required flight attendant at the midcabin flight attendant station during takeoff and landing on Boeing 767 airplanes. *Grant, February 20, 2003, Exemption No. 4298I.*

*Docket No.:* FAA–2001–8939.

*Petitioner:* Experimental Aircraft Association, Inc. (EAA).

*Section of 14 CFR Affected:* 14 CFR 103.1(a) and(e).

*Description of Relief Sought/ Disposition:* To permit individuals authorized by EAA to give instruction in power ultralights that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed. *Grant, February 20, 2003, Exemption No. 3784L.*

*Docket No.:* FAA–2003–14309.

*Petitioner:* Kenmore Air Harbor, Inc. (Kenmore).

*Section of 14 CFR Affected:* 14 CFR 135.203(a)(1).

*Description of Relief Sought/ Disposition:* To permit Kenmore to conduct seaplane operations under visual flight rules, outside controlled airspace, over water, and at an altitude below 500 feet above ground level. *Grant, February 24, 2003, Exemption No. 2528L.*

*Docket No.:* FAA–2001–9349.

*Petitioner:* TWA Airlines, L.L.C.

*Section of 14 CFR Affected:* 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and appendix F.

*Description of Relief Sought/ Disposition:* To permit TWA to combine recurrent flight and ground training and proficiency checks for TWA's flight crew members in a single annual training and proficiency evaluation program. *Grant, February 24, 2003, Exemption No. 7481A.*

*Docket No.:* FAA–2003–14219.

*Petitioner:* Douglas M. Melson.

*Section of 14 CFR Affected:* 14 CFR 121.383(c).

*Description of Relief Sought/ Disposition:* To permit you to act as a pilot in operations conducted under part 121 after reaching your 60th birthday. *Denial, February 24, 2003, Exemption No. 7979.*

*Docket No.:* FAA–2001–9159.

*Petitioner:* Omniflight Helicopters, Inc.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Omniflight to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 6653C.*

*Docket No.:* FAA–2000–8433.

*Petitioner:* New Air Helicopters, LLC (NAH).

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit NAH to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 6884B.*

*Docket No.:* FAA–2003–14463.

*Petitioner:* GTA Air, Inc.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit GTA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7988.*

*Docket No.:* FAA–2003–14251.

*Petitioner:* Frontline Aviation, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Frontline to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7987.*

*Docket No.:* FAA–2003–14279.
*Petitioner:* South Aero, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit South Aero to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7985.*

*Docket No.:* FAA–2001–9228.
*Petitioner:* Bridger Aviation Services, Inc. (Bridger).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Bridger to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 25, 2003, Exemption No. 7519A.*

*Docket No.:* FAA–2003–14300.
*Petitioner:* Aircraft Owners and Pilots Association (AOPA).
*Section of 14 CFR Affected:* 14 CFR 61.3(c) and 61.23(a)(3)(ii) and (iii).
*Description of Relief Sought/ Disposition:* To permit each AOPA member to conduct recreational pilot flight activities using a current and valid U.S. driver's license instead of an FAA-issued medical certificate. *Denial, March 3, 2003, Exemption No. 7998.*

*Docket No.:* FAA–2002–13467.
*Petitioner:* Experimental Aircraft Association, Inc. (EAA).
*Section of 14 CFR Affected:* 14 CFR 61.23.
*Description of Relief Sought/ Disposition:* To permit each EAA member to conduct recreational pilot flight activities using a current and valid U.S. driver's license instead of an FAA-issued medical certificate. *Denial, March 3, 2003, Exemption No. 7997.*

*Docket No.:* FAA–2003–14354.
*Petitioner:* Joel A. Schneider, MD.
*Section of 14 CFR Affected:* 14 CFR 91.9 and 91.531.
*Description of Relief Sought/ Disposition:* To permit certain qualified pilots of Dassault Mystere-Falcon 10 aircraft (Falcon 10) (serial Nos. 001 through 226) to operate those aircraft without a pilot who is designated as second in command. *Denial, February 25, 2003, Exemption No. 7994.*

*Docket No.:* FAA–2003–14220.
*Petitioner:* Gerald S. Ross.
*Section of 14 CFR Affected:* 14 CFR 121.383(c).
*Description of Relief Sought/ Disposition:* To permit Gerald S. Ross to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Grant/February 27, 2003, Exemption No. 7992.*

*Docket No.:* FAA–2000–8454.
*Petitioner:* United Air Lines, Inc. (United).
*Section of 14 CFR Affected:* 14 CFR 121.434(c)(1)(ii).
*Description of Relief Sought/ Disposition:* To permit United to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot-in-command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424. *Grant, February 28, 2003, Exemption No. 6570E.*

*Docket No.:* FAA–2003–14249.
*Petitioner:* Dan E. Chauvet.
*Section of 14 CFR Affected:* 14 CFR 91.109(a) and (b)(3).
*Description of Relief Sought/ Disposition:* To permit Dan E. Chauvet to conduct certain flight instruction and simulated instrument flights to meet recent experience requirements in Beechcraft Baron, Bonanza, Debonair, and Travel Air aircraft equipped with a functioning throwover control wheel instead of functioning dual controls. *Grant, February 28, 2003, Exemption No. 7990.*

*Docket No.:* FAA–2003–14252.
*Petitioner:* Jack Oliphant.
*Section of 14 CFR Affected:* 14 CFR 91.109(a).
*Description of Relief Sought/ Disposition:* To permit Jack Oliphant to conduct certain flight instruction in Beechcraft Bonanza aircraft equipped with a functioning throwover control wheel instead of functioning dual controls. *Grant, February 28, 2003, Exemption No. 7991.*

*Docket No.:* FAA–2002–13347.
*Petitioner:* Executive Jet Management, dba (EJM).
*Section of 14 CFR Affected:* 14 CFR 135.145(a).
*Description of Relief Sought/ Disposition:* To permit EJM to place turbojet airplanes in service under part 135 without conducting proving tests. *Denial, March 10, 2003, Exemption No. 7999.*

*Docket No.:* FAA–2001–9227.
*Petitioner:* Colgan Air Services (Colgan).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Colgan to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 11, 2003, Exemption No. 7515A.*

*Docket No.:* FAA–2001–9229.
*Petitioner:* Trail Ridge Air, Inc. (TRA).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit TRA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 11, 2003, Exemption No. 7514A.*

*Docket No.:* FAA–2003–14605.
*Petitioner:* Planemasters, Ltd.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Planemasters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 11, 2003, Exemption No. 7976.*

*Docket No.:* FAA–2001–9364.
*Petitioner:* Jacqueline A. Julio.
*Section of 14 CFR Affected:* 14 CFR 121.311(b).
*Description of Relief Sought/ Disposition:* To permit Ms. Jacqueline A. Julio to be secured by a personal safety belt and held on her caregiver's lap while aboard an aircraft although she has reached her second birthday. *Grant, March 11, 2003, Exemption No. 5195F.*

*Docket No.:* FAA–2003–14641.
*Petitioner:* Aris, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Aris to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 11, 2003, Exemption No. 7962.*

*Docket No.:* FAA–2001–9096.
*Petitioner:* Air Transport Association of America, Inc.
*Section of 14 CFR Affected:* 14 CFR 121.485(b).
*Description of Relief Sought/ Disposition:* To permit ATA-member airlines and other similarly situated part 121 air carries to conduct flights of less than 12 hours' duration with an airplane having a flightcrew of three or more pilots and an additional flight crewmember without requiring the rest period following that flight to be twice the hours flown since the last rest period at each flight crewmember's home base. *Grant, March 11, 2003, Exemption No. 4317I.*

*Docket No.:* FAA–2001–8612.
*Petitioner:* William L. Hale.
*Section of 14 CFR Affected:* 14 CFR 91.109(a) and (b)(3).
*Description of Relief Sought/ Disposition:* To permit William L. Hale to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, March 11, 2003, Exemption No. 6897B.*

*Docket No.:* FAA–2003–14616.
*Petitioner:* Rotocraft Leasing Company, L.L.C. (RLC).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit RLC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 14, 2003, Exemption No. 8003.*

*Docket No.:* FAA–2003–14653.
*Petitioner:* Tex Star Air Freight, Inc. (Tex Star).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Tex Star to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 14, 2003, Exemption No. 8002.*

*Docket No.:* FAA–2003–14327.
*Petitioner:* MG Aviation, Inc. (MGA).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit MGA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, March 3, 2003, Exemption No. 7995.*

*Docket No.:* FAA–2003–14474.
*Petitioner:* Leon A. Boyd.
*Section of 14 CFR Affected:* 14 CFR 121.383 (c).
*Description of Relief Sought/ Disposition:* To permit Leon A. Boyd to act as a pilot in operations conducted under part 121 after reaching his 60th birthday. *Denial, March 3, 2003, Exemption No. 7996.*

*Docket No.:* FAA–2001–9030.
*Petitioner:* State of Alaska, Division of Forestry (DOF).
*Section of 14 CFR Affected:* 14 CFR 91.119(b) and (c).
*Description of Relief Sought/ Disposition:* To permit pilots employed by DOF or acting under a DOF contract to conduct certain firefighting operations. Such operations require the aerial application of fire retardants or water over congested areas and require cargo paradrops and/or the aerial application of fire retardants or water over other than congested areas in the State of Alaska. *Grant, March 3, 2003, Exemption No. 4063D.*

*Docket No.:* FAA–2001–9438.
*Petitioner:* Aberdeen Flying Service (Aberdeen).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Aberdeen to operate certain aircraft under part 135 without a TSO–C–112 (Mode S) transponder installed on those aircraft. *Grant, March 3, 2003, Exemption No. 7550A.*

*Docket No.:* FAA–2000–8182.
*Petitioner:* Washoe County Sheriff's Office.
*Section of 14 CFR Affected:* 14 CFR 61.113 (e).
*Description of Relief Sought/ Disposition:* To permit members of the Washoe County Sheriff's Air Squadron who hold private pilot certificates to continue to be reimbursed for fuel, oil, and maintenance expenses incurred while performing search and location missions for the Sheriff's Office. *Grant, March 11, 2003, Exemption No. 7473A.*

*Docket No.:* FAA–2001–8863.
*Petitioner:* Department of the Navy.
*Section of 14 CFR Affected:* 14 CFR 91.215(c).
*Description of Relief Sought/ Disposition:* To permit the Navy to provide realistic air combat training in airspace defined in the exemption as the ''Transponder-Off Area.'' *Grant, March 25, 2003, Exemption No. 6741B.*

*Docket No.:* FAA–2001–8966.
*Petitioner:* M. Shannon & Associates.
*Section of 14 CFR Affected:* 14 CFR 91.9(a) and 91.531(a)(1) and (2).
*Description of Relief Sought/ Disposition:* To permit Shannon and certain operators of Cessna Model 500, 550, and S550 Citation airplanes to operate those airplanes without a pilot designated as second in command. *Grant, March 28, 2003, Exemption No. 6480E.*

*Docket No.:* FAA–2002–13323.
*Petitioner:* Eagle Jet Charter, Inc., dba Scenic Airlines, Inc. (EJC).
*Section of 14 CFR Affected:* 14 CFR 121.313(j)(1).
*Description of Relief Sought/ Disposition:* To permit EJC to operate three Fokker F–27 airplanes after April 9, 2003. *Grant, April 2, 2003, Exemption No. 8011.*

*Docket No.:* FAA–2001–9463.
*Petitioner:* Fare Share, Ltd. (FSL).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit FSL to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 7542A.*

*Docket No.:* FAA–2001–10058.
*Petitioner:* Rhoades Aviation, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Rhoades to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 7614A.*

*Docket No.:* FAA–2001–9097.
*Petitioner:* Federal Express Corporation (FedEx).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit FedEx to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 5711G.*

*Docket No.:* FAA–2003–14676.
*Petitioner:* Western Oregon Aviation (WOA).
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit WOA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 8008.*

*Docket No.:* FAA–2003–14770.
*Petitioner:* Blue Sky Helicopter, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit Blue Sky to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 8009.*

*Docket No.:* FAA–2003–14728.
*Petitioner:* LonAire Flying Service, Inc.
*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought/ Disposition:* To permit LonAire to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, April 1, 2003, Exemption No. 8010.*

*Docket No.:* FAA–2003–14681.
*Petitioner:* Royal Jordanian Airlines (RJA).
*Section of 14 CFR Affected:* 14 CFR 129.28(c).

*Description of Relief Sought/ Disposition:* To permit RJA to operate its Airbus 340 and 310 airplanes after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 8, 2003, Exemption No. 8022.*

*Docket No.:* FAA–2003–14820.

*Petitioner:* Dutch Caribbean Airline N.V. (DCA).

*Section of 14 CFR Affected:* 14 CFR 129.28(c).

*Description of Relief Sought/ Disposition:* To permit DCA to operate three MD–80 aircraft after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 8, 2003, Exemption No. 8023.*

*Docket No.:* FAA–2003–14643.

*Petitioner:* Aeroflot.

*Section of 14 CFR Affected:* 14 CFR 129.28(c).

*Description of Relief Sought/ Disposition:* To permit Aeroflot to operate some of its Boeing 767 and Airbus 310 aircraft after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 8, 2003, Exemption No. 8020.*

*Docket No.:* FAA–2003–14692.

*Petitioner:* Air Luxor.

*Section of 14 CFR Affected:* 14 CFR 129.28(c).

*Description of Relief Sought/ Disposition:* To permit Air Luxor to operate its Lockheed L1011–500 aircraft after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 7, 2003, Exemption No. 8013.*

*Docket No.:* FAA–2003–14709.

*Petitioner:* El Al Israel Airlines.

*Section of 14 CFR Affected:* 14 CFR 129.28(c).

*Description of Relief Sought/ Disposition:* To permit El Al to operate three Boeing 747–200 classic airplanes after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 7, 2003, Exemption No. 8014.*

*Docket No.:* FAA–2003–14498.

*Petitioner:* Aeromexico (AMA).

*Section of 14 CFR Affected:* 14 CFR 129.28(b) and (c).

*Description of Relief Sought/ Disposition:* To permit AMA to operate some of its MD–80 aircraft after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 8, 2003, Exemption No. 8019.*

*Docket No.:* FAA–2003–14660.

*Petitioner:* Pakistan International Airlines (PIA).

*Section of 14 CFR Affected:* 14 CFR 129.28(c).

*Description of Relief Sought/ Disposition:* To permit PIA to operate its fleet of Boeing 747–200 Combi, Boeing 747–300 and Airbus 310–300 aircraft after the April 9, 2003, compliance date for reinforced flight deck doors. *Denial, April 8, 2003, Exemption No. 8021.*

*Docket No.:* FAA–2003–14545.

*Petitioner:* Temsco Helicopters, Inc.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Temsco to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, February 27, 2003, Exemption No. 7993.*

[FR Doc. 03–12489 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2003–15179]**

### Technical Standard Order–C38e, VHF Radio Communications Receiving Equipment Operating Within the Radio Frequency Radio Frequency Range 117.975 to 137.000 Megahertz

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability and requests for public comment.

**SUMMARY:** This notice announces the availability of and request comments on a revised Technical Standard Order (TSO)–C38e, VHF Radio Communications Receiving Equipment Operating within the Radio Frequency Range 117.975 to 137.000 Megahertz. The revised TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standards (MPS) their VHF radio communications receiving equipment must first meet for approval and identification with the applicable TSO markings.

**DATES:** Submit comments on or before June 19, 2003.

**ADDRESSES:** Send all comments on the proposed TSO revision to: Federal Aviation Administration, Aircraft Engineering Division, Aircraft Certification Service, Room 815, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. Moin Abulhosn, AIR–130. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Moin Abulhosn, AIR–130, Room 815, Federal Aviation Administration, Aircraft Engineering Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 385–4648, FAX: (202) 385–4651.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

You are invited to comment on the proposed revised TSO listed in this notice by submitting written data, views, or arguments to the address listed above. Your comments should identify ''Comments to TSO–C38e'' You can examine all comments on the proposed revised TSO before and after the comment closing date at the Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will considers all communications received on or before the closing date before issuing the final revised TSO.

#### Background

This proposed revision to TSO–C38d includes the latest TSO boilerplate language. This language incorporates a Functionality definition used to specify the Function Hazard Classification. Furthermore, the data required with the TSO application has been slightly modified to include:

a. The minimum operational performance standards defined by RTCA/DO–186A, ''Minimum Operational Performance Standards for Airborne Radio Communications, Equipment Operating Within the Radio Frequency Range 117.975–137.00 Mhz,'' Section 2.0, dated October 20, 1995, including Change 1, dated September 29, 1998, and Change 2, dated March 5, 2002.

b. The minimum requirements of 8.33 kHz channel spacing receivers (Class E) as defined by RTCA/DO–186A, including Changes 1 and 2, while retaining requirements of 25 kHZ channel spacing receivers (Class C and D) of TSO–37d.

c. By reference to RTCA/DO 186A, including Changes 1 and 2, addresses electromagnetic compatibility with the Global Navigation Satellite System (GNSS0.

d. The environmental conditions and test procedures specified in RTCA/DO–160D, including Changes 1, 2, and 3.

The basic TSO provide minimum performance standards for VHF radio communications receiver equipment. Incorporated with this standard are equipment characteristics that should be useful to users, designers, manufacturers, and installations of VHF radio communications receiver equipment.

### How To Obtain Copies

You may get a copy of the proposed revised TSO from the Internet at: *http://av-info.faa.gov/tso/Tsopro/Proposed.htm.* You may also request a copy from Moin Abulhosn. See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Dated: Issued in Washington, DC, on May 14, 2003.

**David W. Hempe,**

*Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 03–12640 Filed 5–19–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Docket No. FAA–2003–15158**

## Technical Standard Order—C37e, VHF Radio Communications Transmitting Equipment Operating Within the Radio Frequency Range 117.975 to 137.000 Megahertz

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability and requests for public comment.

**SUMMARY:** This notice announces the availability of and request comments on a revised Technical Standard Order (TSO)–C37e, VHF Radio Communications Transmitting Equipment Operating Within the Radio Frequency Range 117.975 to 137.000 Megahertz. The revised TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standards (MPS) their VHF radio communications transmitting equipment must first meet for approval and identification with the applicable TSO markings.

**DATES:** Submit comments on or before June 19, 2003.

**ADDRESSES:** Send all comments on the proposed TSO revision to: Federal Aviation Administration, Aircraft Engineering Division, Aircraft Certification Service, Room 815, AIR–130, 800 Independent Avenue, SW., Washington, DC 20591. Attn: Mr. Moin Abulhosn, AIR–130. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independent Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Moin Abulhosn, AIR–130, Room 815, Federal Aviation Administration, Aircraft Engineering Division, Aircraft Certification Service, 800 Independent Avenue, SW., Washington, DC 20591, telephone (202) 385–4648, Fax: (202) 385–4651.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

You are invited to comment on the proposed revised TSO listed in this notice by submitting written data, views, or arguments to the address listed above. Your comments should identify ''Comments to TSO–C37e.'' You can examine all comments on the proposed revised TSO before and after the comment closing date at the Federal Aviation Administration, Room 815, 800 Independent Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final revised TSO.

### Background

This proposed revision to TSO–C37d includes the latest TSO boilerplate language. This language incorporates a Functionality definition used to specify the Function Hazard Classification. Furthermore, the data required with the TSO application has been slightly modified to include:

a. The minimum operational performance standards defined by RTCA/DO–186A, ''Minimum Operational Performance Standards for Airborne Radio Communications Equipment Operating Within the Radio Frequency Range 117.975–137.00 Mhz,'' Section 2.0, dated October 20, 1995, including Change 1, dated September 29, 1998, and Change 2, dated March 5, 2002.

b. The minimum requirements of 8.33 kHz channel spacing transmitters (Class 5 and 6) as defined by RTCA/DO–186A, including Changes 1 and 2, while retaining requirements of 25 kHz channel spacing transmitters (Class 3 and 4) of TSO–37d.

c. By reference to RTCA/DO–186A, including Channels 1 and 2, addresses the electromagnetic compatibility with the Global Navigation Satellite System (GNSS).

d. The environmental conditions and test procedures specified in RTCA/DO–160D, including Changes 1, 2, and 3.

The basic TSO provides minimum performance standards for VHF radio communications transmitting equipment. Incorporated within this standard are equipment characteristics that should be useful to users, designers, manufacturers, and installers of VHF radio communications transmitting equipment.

### How To Obtain Copies

You may get a copy of the proposed revised TSO from the Internet at: *http://av-info.faa.gov./tso/Tsopro/Proposed.htm.* You may also request a copy from Mr. Moin Abulhosn. *See* the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued in Washington, DC, on May 14, 2003.

**David W. Hempe,**

*Manager, Aircraft Engieering Division, Aircraft Certification Service.*

[FR Doc. 03–12641 Filed 5–19–03; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## Environmental Impact Statement; Hatillo-Aguadilla Corridor, Puerto Rico

**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 (EIS) will be prepared for the Hatillo-Aguadilla Corridor in the northwestern area of Puerto Rico.

**FOR FURTHER INFORMATION CONTACT:** Jose Luis Torres, P.E., Federal Highway Administration, Puerto Rico Division, 350 Carlos Chardon Street, Suite 210, San Juan, Puerto Rico 00918, Telephone (787)766–5600 Ext. 234; or Ms. Irma Garcia, P.E., Programming and Special Studies Area, Puerto Rico Highway and Transportation Authority, PO Box 42007, San Juan, Puerto Rico, 00940–2007, Telephone (787)729–1580.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

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

### Background

The FHWA, in cooperation with the Commonwealth of Puerto Rico Department of Transportation and Public Works (PRDTPW), through its

Highway and Transportation Authority (HTA), will prepare a joint environmental impact statement (EIS) on a proposal to construct a new roadway between the municipalities of Hatillo and Aguadilla.

Various environmental resources and issues are known to exist within the limits of the study area for this project. These resources and issues include, but are not limited to: location of prime agricultural land; archaeological resources; historic resources; residential, business and recreational land uses; geology; water quality; scenic viewsheds; native plant communities; wetlands; noise; and preservation of the natural, cultural, scenic and recreational values of the area. Any resources protected under Section 4(f) of the Department of Transportation Act [1] (49 U.S.C. 303 and 23 U.S.C. 138; 23 CFR 771.135(a)) will be addressed in a section 4(f) statement to be prepared for this project.

Section 106 of the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915; 36 CFR part 800) applies to the project. Consultation pursuant to Section 106 is being initiated.

The EIS will address the impacts related to the construction of a new roadway in the Hatillo-Aguadilla Corridor. Recent planning efforts leading to the preparation of an EIS include development of design concepts for the following alternatives: (1) No Action; (2) Conversion to Expressway of existing road PR–2; (3) A New Road, and; (4) A combination of alternatives (2) and (3).

Correspondence describing this proposed action and requesting comments will be sent to appropriate Federal, Commonwealth, and local agencies and to private organizations and individuals that have previously expressed, or are known to have, an interest in this proposal. In addition, public scoping meetings will be held in the Spring/Summer of 2003.

To ensure that the full range of issues and alternatives related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above. The view of agencies having interest on this proposal or knowledge of potential effects on the environmental resources listed above is requested.

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued on: May 13, 2003.

**Lubin M.Quiñones,**

*Division Administrator, Puerto Rico Division Office.*

[FR Doc. 03–12542 Filed 5–19–03; 8:45 am]

**BILLING CODE 4910–22–P**

[1] Section 4(f) of Pub. L. 89–670, 80 Stat. 934, was repealed by Pub. L. 97–449, 96 Stat. 2444, and enacted without substantive change at 49 U.S.C. 303; Section 138 of title 23, U.S.C., remains unchanged. Because of common usage and familiarity, the term section 4(f) continues to be used by the Department of Transportation in matters relating to 49 U.S.C. 303 and 23 U.S.C. 138.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than July 21, 2003.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number __.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov,* or to Ms. Steward at *debra.steward@fra.dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**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, § 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 provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce

information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* State Safety Participation Regulations and Remedial Actions.

*OMB Control Number:* 2130–0509.

*Abstract:* The collection of information is set forth under 49 CFR part 212, and requires qualified state inspectors to provide various reports to FRA for monitoring and enforcement purposes concerning state investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.

*Form Number(s):* FRA F 6180.10; FRA F 6180.29/29A/33; FRA F 6180.61; FRA F 6180.67; FRA F 6180.68/68A/69/96/96A/96B.

*Affected Public:* Businesses.

*Respondent Universe:* States and railroads.

*Reporting Burden:*

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| Application For Participation. | 15 States | 15 updates | 2.5 hours | 38 | $1,748 |
| Training Funding Agreement. | 30 States | 30 agreements | 1 hour | 30 | 1,380 |
| Inspector Training Reimbursement. | 30 States | 300 vouchers | 1 hour | 300 | 12,600 |
| Supervisor Travel Reimbursement. | 30 States | 30 vouchers | 1 hour | 30 | 1,380 |
| Annual Work Plan | 30 States | 30 reports | 15 hours | 450 | 20,700 |
| Inspection Form | 30 States | 18,000 reports | 15 minutes | 4,500 | 189,000 |
| Violation Form | 30 States | 629 reports | 4 hours | 2,516 | 105,672 |
| Remedial Actions Reports | 573 Railroads | 5,048 reports | 15 minutes | 1,262 | 80,768 |
| Violation Report Challenge. | 573 Railroads | 1,010 challenges | 1 hour | 1,010 | 64,640 |
| Delayed Reports | 573 Railroads | 505 reports | 30 minutes | 253 | 16,192 |

*Total Responses:* 25,597.

*Estimated Total Annual Burden:* 10,389 hours.

*Status:* Regular review.

*Title:* Certification of Glazing Materials.

*OMB Control Number:* 2130–0525.

*Abstract:* The collection of information is set forth under 49 CFR Part 223, which requires the certification and permanent marking of glazing materials by the manufacturer. The manufacturer is also responsible for making available test verification data to railroads and FRA upon request.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* 5 manufacturers.

*Total Responses:* 25,211.

*Estimated Total Annual Burden:* 119 hours.

*Status:* Regular review.

*Title:* Two-Way End-of-Train Devices.

*OMB Control Number:* 2130–0540.

*Abstract:* Section 20141 of the United States Code amended the Federal Rail Safety Laws by adding certain statutory mandates related to power brake safety, specifically regarding two-way end-of-train telemetry devices (two-way EOTs). This Section required two-way end-of-train devices (or devices able to perform the same function) on road trains other than locals, road switchers, or work trains to enable the initiation of emergency braking from the rear of the train. The information collected enhances rail safety by ensuring that the locomotive engineer is notified if someone other than a train crew member tests the two-way end-of-train devices at the initial terminal or other point of installation to confirm that the device is capable of initiating an emergency power brake application from the rear of the train. The information collected is also used to by FRA to verify that the end-of-train telemetry equipment is properly calibrated for accuracy according to the manufacturer's specifications at least every 365 days. Additionally, the information collected verifies that the two-way end-of-train devices standards—such as the front unit having a manually operated switch that is labeled ''Emergency'' which can initiate an emergency brake transmission to the rear unit (when activated)—are met.

*Form Number(s):* N/A.

*Affected Public:* Businesses.

*Respondent Universe:* Railroads.

*Total Responses:* 521,500.

*Estimated Total Annual Burden:* 5,042 hours.

*Status:* Regular review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC on May 14, 2003.

**Kathy A. Weiner,**

*Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 03–12488 Filed 5–19–03; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### Oregon Department of Transportation

*(Waiver Petition Docket Number FRA–2003–15168)*

The State of Oregon, Department of Transportation (ODOT) owns three self-propelled passenger coaches (Railway Diesel Cars—RDC) which were built by the Budd Company in 1956. These cars are not used in regular commuter service, but only on a limited seasonal

basis in conjunction with the Lewis and Clark Expedition bicentennial. The cars operate one round trip per day, four days per week (Thursday to Sunday), on trackage owned by the Portland and Western Railroad. The excursion trains operate from a station in Portland, Oregon to Astoria, Oregon where passengers may board special shuttle busses to nearby Fort Clatsop National Historic Site where Lewis and Clark wintered over in 1805–06.

The route traversed by this train goes through three very different types of geography:

1. The first four miles of BNSF track and first two miles of the Portland & Western Railroad are mostly through an industrial area of northwest Portland. This route is also used by Portland to Seattle, Washington intercity trains. Vandalism to passenger trains has not been reported as being a problem;

2. The next 87 miles is mostly rural and a light density population area. This section has no known history of vandalism or incidents of property damage to railroad equipment;

3. The last six miles in Astoria is located on fills and trestles with no public access to trackside. The final segment is adjacent to the Astoria Waterfront Trolley which has not been subjected to incidents of vandalism.

ODOT requests temporary relief from the requirements of Title 49 Code of Federal Regulations (CFR) 223.15 *Requirements for existing passenger cars* due to the infrequent use of the cars, the planned usage for excursion service, and the cost schedule of installing compliant glazing prior to initiation of service. The cars are former VIA Rail Canada equipment and have a double-pane combination of ¼-inch thick safety glass inside and plate glass outside. This glazing system remains the standard in Canada for passenger equipment and these cars are fully compliant with Canadian glazing standards. Also, removable emergency exit windows have been installed in each car as required by 49 CFR 223.15(c). Therefore, the petitioner believes that the operation of these cars, as equipped, would not pose a safety hazard to passengers or employees.

ODOT intends to replace the side facing windows with compliant FRA Type II glazing and has requested funding to do so from the Oregon State Legislature. ODOT believes that the glazing on all three cars can be brought into compliance with the requirements of 49 CFR 223.15 by May 2004.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

FRA's Office of Safety Assurance and Compliance issued a letter to ODOT on May 13, 2003 which stated that no exception will be taken to the continued use of these cars in excursion service until a Final Decision is rendered by FRA's Railroad Safety Board which shall take precedence. Due to exigent circumstances related to the start of planned service, FRA may act on this waiver request before the close of the comment period. However, FRA reserves the right to rescind or modify any approval or denial based upon receipt of comments which, in FRA's judgement, raise significant issues.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–15168) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at FRA's temporary docket room located at 1120 Vermont Avenue, NW., Room 7051, Washington, DC 20005.

Issued in Washington, DC on May 14, 2003.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator, for Safety Standards and Program Development.*

[FR Doc. 03–12633 Filed 5–19–03; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 12, 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, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before June 19, 2003 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0169.

*Form Number:* IRS Forms 4461, 4461–A, and 4461–B.

*Type of Review:* Revision.

*Title:* Form 4461: Application for Approval of Master or Prototype Defined Contribution Plan;

Form 4461–A: Application for Approval of Master or Prototype Defined Benefit Plan; and

Form 4461–B: Application for Approval of Master or Prototype Plan, Mass Submitter Adopting Sponsor.

*Description:* The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 1,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | 4461 | 4461–A | 4461–B |
|---|---|---|---|
| Recordkeeping | 43 hr., 17 min. | 42 hr., 34 min. | 5 hr., 58 min. |
| Learning about the law or the form | 6 hr., 43 min. | 6 hr., 1 min. | 52 min. |
| Preparing the form | 8 hr., 39 min. | 7 hr., 55 min. | 1 hr., 56 min. |
| Copying, assembling, and sending the to the IRS | 16 min. | 16 min. | 16 min. |

*Frequency of Response:* On occasion.
*Estimated Total Reporting/ Recordkeeping Burden:* 109,298 hours.
*OMB Number:* 1545–0881.
*Form Number:* IRS Form 8271.
*Type of Review:*
*Title:* Investor Reporting of Tax Shelter Registration Number.
*Description:* All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their returns from a tax shelter required to be registered (under IRC 6111) must report the tax shelter registration number on that return. Form 8271 is sued for this purpose. We use the information to associate claimed benefits with the tax shelter and to determine if any compliance actions are needed.
*Respondents:* Individuals or households, business or other for-profit, not-for-profit institutions, farms, State, Local or Tribal Government.
*Estimated Number of Respondents/ Recordkeepers:* 297,500.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—6 min.
Learning about the law or the form—7 min.
Preparing the form—16 min.
Copying, assembling, and sending the form to the IRS—10 min.
*Frequency of Response:* Annually.
*Estimated Total Reporting/ Recordkeeping Burden:* 205,275 hours.
*OMB Number:* 1545–1099.
*Form Number:* IRS Form 8811.
*Type of Review:* Extension.
*Title:* Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations
*Description:* Form 8811 is used to collect the name, address, and phone number of a representative of a REMIC who can provide brokers with the correct income amounts that the broker's clients must report on their income tax returns. The form allows the IRS to provide the REMIC industry the information necessary to issue correct information returns to investors.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents/ Recordkeepers:* 1,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—3 hr., 49 min.
Learning about the law or the form—35 min.
Preparing, copying, assembling, and sending the form to the IRS—41 min.
*Frequency of Response:* Other (One-time for each obligation).
*Estimated Total Reporting/ Recordkeeping Burden:* 5,110 hours.
*OMB Number:* 1545–1277.
*Form Number:* IRS Form 1040-TeleFile.
*Type of Review:* Revision.
*Title:* TeleFile.
*Description:* Form 1040EZ filers whose IRS mail label has not changed, will be given the option to file their return by telephone, with no return to send in to the IRS. The IRS will use the information obtained to compute the taxpayer's refund or balance due.
*Respondents:* Individuals or households.
*Estimated Number of Respondents/ Recordkeepers:* 4,578,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—6 min.
Learning about the law or the Tax Record—26 min.
Preparing the Tax Record—39 min.
TeleFile phone call—10 min.
Preparing Form 8855–V—22 min.
*Frequency of Response:* Annually.
*Estimated Total Reporting/ Recordkeeping Burden:* 7,133,900 hours.
*Clearance Officer*: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer*: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 03–12595 Filed 5–19–03; 8:45 am]
BILLING CODE 4830–01–J

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 13, 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 19, 2003 to be assured of consideration.

**Bureau of the Public Debt (PD)**

*OMB Number:* 1535–0012.
*Form Number:* PD F 1455.
*Type of Review:* Extension.
*Title:* Request by Fiduciary for Reissue of United States Savings Bonds/ Notes.
*Description:* PD F 1455 is used by fiduciary to request distribution of U.S. Savings Bonds/Notes to the person(s) entitled.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 72,000.
*Estimated Burden Hours Per Respondent:* 30 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden Hours:* 36,000 hours.
*OMB Number:* 1535–0032.
*Form Number:* PD F 3565.
*Type of Review:* Extension.
*Title:* Application for disposition of Retirement Plan/Individual Retirement Bonds Without Administration of Deceased Owner's Estate.
*Description:* PD F 3565 is used by heirs of deceased owners of Retirement Plan/Individual Retirement Bonds to request disposition.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 50.
*Estimated Burden Hours Per Respondent:* 20 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden Hours:* 17 hours.
*OMB Number:* 1535–0055.
*Form Number:* PD F 1050.
*Type of Review:* Extension.
*Title:* Creditors Consent to Disposition of U.S. Securities and Related Checks Without Administration of Deceased Owner's Estate.
*Description:* PD F 1050 is used to obtain creditors consent to dispose of Savings Bonds of a deceased owner's estate without administration.
*Respondents:* Business or other for-profit, Individuals or households.
*Estimated Number of Respondents:* 3,000.
*Estimated Burden Hours Per Respondent:* 6 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden Hours:* 300 hours.
*OMB Number:* 1535–0084.
*Form Number:* PD F 5263, PD F 5263–1, PD F 5374, and PD F 5374–1.
*Type of Review:* Extension.
*Title:* Order for Series EE U.S. Savings Bonds (PD F 5263); Order for Series EE U.S. Savings Bonds to be Registered in Name of Fiduciary (PD F 5263–I); Series

I Order for U.S. Savings Bonds (PD F 5374); and Series I Order for U.S. Savings Bonds to be Registered in Name of Fiduciary (PD F5374–1).

*Description:* These forms are completed by the purchaser to issue United States Savings Bonds.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 10,000,000.

*Estimated Burden Hours Per Respondent:* 5 minutes per form.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 830,000 hours.

*OMB Number:* 1535–0102.

*Form Number:* PD F 1071.

*Type of Review:* Extension.

*Title:* Certificate of Ownership of United States Bearer Securities.

*Description:* PD F 1071 is used to establish ownership and support a request for payment.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents:* 1,000.

*Estimated Burden Hours Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 250 hours.

*OMB Number:* 1535–0126.

*Form Number:* PD F 3871.

*Type of Review:* Extension.

*Title:* Application for Issue of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

*Description:* PD F 3871 is submitted by companies engaged in the business of writing mortgage guaranty insurance for purpose of purchasing ''Tax and Loss'' bonds.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 37 Estimated Burden Hours Per Respondent: 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 20 hours.

*Clearance Officer:* Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

*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. 03–12676 Filed 5–19–03; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Diseases Not Associated With Exposure to Certain Herbicide Agents

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority granted by the Agent Orange Act of 1991 and the Veterans Education and Benefits Expansion Act of 2001, has determined that a presumption of service connection based on exposure to herbicides used in the Republic of Vietnam during the Vietnam Era is not warranted for the following conditions: Hepatobiliary cancers, nasopharyngeal cancer, bone and joint cancer, breast cancer, cancers of the female reproductive system, urinary bladder cancer, renal cancer, testicular cancer, leukemia (other than chronic lymphocytic leukemia (CLL)), abnormal sperm parameters and infertility, Parkinson's disease and parkinsonism, amyotrophic lateral sclerosis (ALS), chronic persistent peripheral neuropathy, lipid and lipoprotein disorders, gastrointestinal and digestive disease, immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, gastrointestinal tract tumors, brain tumors, light chain-associated (AL) amyloidosis, endometriosis, adverse effects on thyroid homeostasis, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Konieczny, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–6779.

**SUPPLEMENTARY INFORMATION:** Section 3 of the Agent Orange Act of 1991, Pub. L. 102–4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with the National Academy of Sciences (NAS) to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam Era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam Era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease. Section 3 of Pub. L. 102–4 also required that NAS submit reports on its activities every two years (as measured from the date of the first report) for a ten-year period.

Section 2 of Pub. L. 102–4, codified in pertinent part at 38 U.S.C. 1116(b) and (c), provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (*i.e.*, the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (*i.e.*, a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam Era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Section 2 of the Agent Orange Act of 1991 provided that the Secretary's authority and duties under that section would expire 10 years after the first day of the fiscal year in which NAS transmitted its first report to VA. The first NAS report was transmitted to VA in July 1993, during the fiscal year that began on October 1, 1992. Accordingly, VA's authority under section 2 of the Agent Orange Act of 1991 expired on September 30, 2002. In December 2001, however, Congress enacted the Veterans Education and Benefits Expansion Act of 2001, Public Law 107–103. Section 201(d) of that Act extended VA's authority under 38 U.S.C. 1116(b)–(d) through September 30, 2015.

Although 38 U.S.C. 1116 does not define ''credible,'' it does instruct the Secretary to ''take into consideration whether the results [of any study] are

statistically significant, are capable of replication, and withstand peer review.'' Simply comparing the number of studies which report a positive relative risk to the number of studies which report a negative relative risk for a particular condition is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive association between herbicide exposure and the subsequent development of the particular condition. Because of differences in statistical significance, confidence levels, control for confounding factors, bias, and other pertinent characteristics, some studies are clearly more credible than others, and the Secretary has given the more credible studies more weight in evaluating the overall weight of the evidence concerning specific diseases.

NAS issued its initial report, entitled ''Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam,'' (VAO) on July 27, 1993. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of Hodgkin's disease, porphyria cutanea tarda, multiple myeloma, and certain respiratory cancers; and that there was no positive association between herbicide exposure and any other condition, other than chloracne, non-Hodgkin's lymphoma, and soft-tissue sarcomas, for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on January 4, 1994. (See 59 FR 341 [1994].)

NAS issued its second report, entitled ''Veterans and Agent Orange: Update 1996'' (Update 1996), on March 14, 1996. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of prostate cancer and acute and subacute peripheral neuropathy in exposed persons. The Secretary further determined that there was no positive association between herbicide exposure and any other condition, other than those for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on August 8, 1996. (*See* 61 FR 41442 (1996).)

NAS issued a third report, entitled ''Veterans and Agent Orange: Update 1998'' (Update 1998), on February 11, 1999. The focus of this updated review was on new scientific studies published since the release of Update 1996 and updates of scientific studies previously reviewed. After NAS issued Update 1998, the Secretary determined that there was no positive association between herbicide exposure and any other condition, other than those for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on November 2, 1999. (*See* 64 FR 59232 [1999].)

At VA's request, NAS issued a special interim report, ''Veterans and Agent Orange: Herbicide/Dioxin Exposure and Type 2 Diabetes'' (VAO: Diabetes) on October 11, 2000. NAS concluded ''there is limited/suggestive evidence of an association between exposure to the herbicides used in Vietnam or the contaminant dioxin and Type 2 diabetes.'' NAS based its conclusion on the totality of the scientific evidence on this issue, not one particular study. (VAO: Diabetes.) After considering all of the evidence, the Secretary determined that there is a positive association between exposure to herbicides and Type 2 diabetes and, therefore, a presumption of service connection was warranted. (*See 66 FR* 2376 (2001).)

NAS issued a fourth report, entitled ''Veterans and Agent Orange: Update 2000'' (Update 2000), on April 19, 2001. The focus of this updated review was on new scientific studies published since the release of Update 1998 and updates of scientific studies previously reviewed. After NAS issued Update 2000, the Secretary determined that there was no positive association between herbicide exposure and any other condition, other than those for which presumptions already existed. A notice of the diseases that the Secretary determined were not associated with exposure to herbicide agents was published on June 24, 2002 (*See* 67 FR 42600–608).

NAS issued its fifth report, entitled ''Veterans and Agent Orange: Update 2002'' (Update 2002) on January 23, 2003. The focus of this updated review was on new scientific studies published since the release of Update 2000, and to review the studies previously reviewed along with the newest scientific evidence. The Secretary subsequently determined that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of chronic lymphocytic leukemia (CLL) in exposed persons. A proposed rule to establish a presumption of service connection for CLL was published in the **Federal Register** of March 26, 2003 (See 68 FR 14567). The Secretary also determined that there is no positive association between herbicide exposure and hepatobiliary cancers, nasopharyngeal cancer, bone and joint cancer, breast cancer, cancers of the female reproductive system, urinary bladder cancer, renal cancer, testicular cancer, leukemia (other than CLL), abnormal sperm parameters and infertility, Parkinson's disease and parkinsonism, amyotrophic lateral sclerosis (ALS), chronic persistent peripheral neuropathy, lipid and lipoprotein disorders, gastrointestinal and digestive disease including liver toxicity, immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, gastrointestinal tract tumors, brain tumors, AL amyloidosis, endometriosis, adverse effects on thyroid homeostasis, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted. This notice, pursuant to 38 U.S.C. 1116(c)(1)(B), summarizes the scientific data reviewed by NAS in its Update 2002, and conveys the Secretary's determination regarding no positive association between herbicide exposure and the above-cited conditions.

NAS, in Update 2002, assigns hepatobiliary cancers, nasopharyngeal cancer, bone and joint cancer, breast cancer, cancers of the female reproductive system, urinary bladder cancer, renal cancer, testicular cancer, leukemia (other than CLL), abnormal sperm parameters and infertility, Parkinson's disease and parkinsonism, chronic persistent peripheral neuropathy, lipid and lipoprotein disorders, gastrointestinal and digestive disease, immune system disorders, circulatory disorders, respiratory disorders (other than certain respiratory cancers), skin cancer, cognitive and neuropsychiatric effects, AL amyloidosis, endometriosis, and adverse effects on thyroid homeostasis to a category labeled inadequate/insufficient evidence to determine whether an association exists. This is defined as meaning that the available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence or absence of an association with herbicide exposure. In Update 2002, NAS assigned gastrointestinal tract tumors and brain tumors to a category labeled limited or suggestive evidence of no association. This is defined as meaning that the available studies are mutually consistent in not showing a positive association between exposure to

herbicides and the outcome at any level of exposure.

The Secretary's determinations regarding individual diseases are based on all available evidence in Update 2002 and prior NAS reports. This notice generally states specific information only with respect to significant additional studies that were first reviewed by NAS in Update 2002. Information regarding additional relevant studies has previously been stated in VA's prior notices following earlier NAS reports, and will not be repeated here.

**Hepatobiliary Cancers**

Hepatobiliary cancers are cancers of the liver and intrahepatic bile ducts. There are a variety of known risk factors, including chronic infections with hepatitis B or C, exposure to aflatoxin, vinyl chloride and polychlorinated biphenyl (PCB), and smoking, that should be considered by a credible study.

NAS noted in VAO and subsequent reports that there were relatively few occupational, environmental, or veteran studies of hepatobiliary cancer. It also noted that most of the few existing studies addressing hepatobiliary cancer contain methodological difficulties such as small study size and inadequate control for life-style-related risk factors, or do not support an association with herbicide exposure.

An environmental study of the residents of Chapaevsk, Russia, an industrial community with documented contamination by dioxins and other chemicals of the food and water supply, revealed a higher incidence of liver cancer than in Russia as a whole or the Samara region of Russia, in which Chapaevsk is located, although no information was provided on exposed cases or estimated relative risk for morbidity. (Revich B, Aksel E, Ushakova T, Ivanova I, Zuchenko N, Lyuev N, Brodsky B, Sotsov Y. 2001. Dioxin exposure and public health in Chapaevsk, Russia. Chemosphere 43:951–966) In Update 2002, NAS determined that this study cannot be taken as strong evidence for an association between dioxins and liver cancer because the study failed to adjust for confounding by socioeconomic, lifestyle, comorbidity and other factors, and because of the likelihood of multiple exposures and concerns regarding the study design.

NAS found that there was no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and hepatobiliary cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and hepatobiliary cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Nasopharyngeal Cancer**

Nasal and nasopharyngeal cancers are relatively rare in the United States and thus difficult to study epidemiologically. Reported risk factors for nasal cancer include occupational exposure to nickel and chromium compounds, wood dust, and formaldehyde. Studies of nasopharyngeal cancer have reported associations with the consumption of salt-preserved foods, cigarette smoking, and Epstein-Barr virus. NAS noted in VAO and subsequent reports that there was inadequate or insufficient evidence to determine whether an association exists between herbicide exposure and nasal and nasopharyngeal cancer.

An environmental study of the residents of Chapaevsk, Russia, revealed a higher incidence of pharyngeal cancer in females than in Russia as a whole, although no information was provided on exposed cases or estimated relative risk for morbidity. (Revich et al., 2001.) Male residents of Chapaevsk did not show a higher incidence of pharyngeal cancer. NAS reported, in Update 2002, that the usefulness of these data is restricted because of factors such as lack of adjustment for confounding, the likelihood of multiple exposures, concern regarding the study design, and the absence of information on the completeness and accuracy of cancer incidence data.

NAS found that there was no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and nasopharyngeal cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and nasopharyngeal cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Bone and Joint Cancer**

NAS noted that bone cancer is more common in teenagers than adults, and, therefore, the incidence among Vietnam veterans is quite low. Among the risk factors for adults contracting bone and joint cancer are exposure to ionizing radiation from treatment for other cancers and a history of certain noncancerous bone diseases. NAS found in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and bone cancer.

An environmental study of the residents of Chapaevsk, Russia, revealed seven deaths in male residents and seven deaths in female residents due to cancer of the bones or soft tissues. (Revich et al., 2001.) In Update 2002, NAS reported that these results cannot be taken as evidence for an association between bone cancer and dioxins, because cancers of the bone and soft tissue were combined in the analysis. Further, the increased risk for death due to bone cancer and soft-tissue cancer combined was not statistically significant.

NAS found that there was no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and bone and joint cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and bone and joint cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Breast Cancer**

NAS noted that breast cancer is the second most common cancer among women in the United States. Breast cancer incidence generally increases with age. Risk factors other than aging include a personal or family history of breast cancer and certain reproductive characteristics; specifically, early onset of menarche, late onset of menopause, and either no pregnancies or first full-term pregnancy after age 30. NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and breast cancer.

In its prior reports, NAS reviewed several studies finding no increased risk of breast cancer associated with herbicide exposure or Vietnam service, and possibly even showing a limited protective effect for new incidence of breast cancer

NAS reviewed a number of new studies for Update 2002. A follow up to an occupational study reviewed in Update 2000 published results on the reproducibility of the self-reported data on farm exposures to potentially hazardous agents such as pesticides. (Duell EJ, Millikan RC, Savitz DA, Schell MJ, Newman B, Tse CJ, Sandler DP. 2001. Reproducibility of reported farming activities and pesticide use among breast cancer cases and controls: A comparison of two modes of data collection. Annals of Epidemiology 11(3):178–185) It was found that the farming-exposure information was generally reproducible, which provided some assurance that the prior conclusion of no overall excess risk of breast cancer was not due to measurement error in the exposure assessment.

An environmental study of the joint effects of all congeners of polychlorinated biphenyls (PCBs) (Holford TR, Zheng T, Mayne ST, Zahm SH, Tessari JD, Boyle P. 2000. Joint effects of nine polychlorinated biphenyl (PCB) congeners on breast cancer risk. International Journal of Epidemiology 29 (6):975–82) showed that total PCB was not significantly associated with breast cancer risk. NAS noted, however, that significant protective effects were detected for potential antiestrogens and a dioxin-like congener. This study was consistent with results of previously reported studies. General population controls were not used, which limited the external validity of the results.

The relationship between the relatively high dioxin concentrations in Chapaevsk, Russia and breast cancer incidence and related mortality was studied in Revich *et al.* (2001). The incidence rate of female breast cancer, age-adjusted to the Russian standard population, was higher in Chapaevsk in all age groups than in Russia and the Samara region. NAS noted that the lack of adjustment for such risk factors as family size, breastfeeding, alcohol use, body-mass index and fat consumption was one of the main weakness of this study.

Two environmental studies provided evidence of a relationship between the development of breast cancer and increased concentrations of PCB congeners that have dioxin-like activity. (Aronson KJ, Miller AB, Woolcott CG, Sterns EE, McCready DR, Lickley LA, Fish EB, Hiraki GY, Holloway C, Ross T, Hanna WM, SenGupta SK, Weber J-P. 2000. Breast adipose tissue concentrations of polychlorinated biphenyls and other organochlorines and breast cancer risk. Cancer Epidemiology, Biomarkers and Prevention 9(1):53–63; Demers A, Ayotte P, Brisson J, Dodin S, Robert J, Dewailly E. 2002. Plasma concentrations of polychlorinated biphenyls and the risk of breast cancer: A congener-specific analysis. American Journal of Epidemiology 155(7):629–635) NAS noted that the external validity of one of the studies (Aronson *et al.*) was limited by the lack of general-population controls. NAS found that the other study (Demers *et al.*) was well conducted and appears to have used appropriate statistical methods. NAS also noted, however, that PCB cogeners also have non-dioxin-like components, and that the observed effects may be attributable to those components.

Another study found further evidence of increased breast cancer risk associated with increased serum TCDD. (Warner M, Eskenazi B, Mocarelli P, Gerthoux PM, Samuels S, Needham L, Patterson D, Brambilla P. Serum dioxin concentrations and breast cancer risk in the Seveso Women's Health Study. Environmental Health Perspectives 2002; 110(7) 625–628) NAS found that this study adjusted for risk factors and was apparently free from potential bias. NAS also noted, however, that the findings were potentially limited because they were based on only 15 cases.

In a Vietnam veteran study that included 4,140 female Vietnam veterans and 4,140 veteran controls that did not service in Vietnam, it was concluded that Vietnam veterans did not experience a significantly higher prevalence of breast cancer. (Kang HK, Mahan CM, Lee KY, Magee CA, Selvin S. 2000. Prevalence of gynecologic cancers among female Vietnam veterans. Journal of Occupational & Environmental Medicine 42(11):1121–1127.) Although the prevalence of breast cancer was higher in female Vietnam veterans than in non-Vietnam veterans, the difference was not considered statistically significant. This study, also, was considered by NAS to be well designed, have adequate power, and be highly relevant for the assessment of the effect of Agent Orange and other herbicides on breast cancer risk in Vietnam veterans. NAS also noted, however, that the study's usefulness may be limited because questions on exposure focused on the Vietnam experience as a whole instead of on exposures to Agent Orange, other herbicides or their contaminants.

NAS concluded that there is still inadequate or insufficient evidence to determine whether there is an association between exposure to herbicides and breast cancer.

As noted above, studies reviewed in prior NAS reports predominately showed no association between breast cancer and herbicide exposure, or possibly a limited protective association. The additional evidence reviewed in Update 2002 includes evidence consistent with those prior studies, as well as some studies providing evidence of an association, subject to the limitations discussed above.

Taking account of the available evidence and NAS's analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and breast cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Cancers of the Female Reproductive System**

NAS noted that the cancers of the female reproductive system include cancers of the cervix, endometrium (also referred to as the corpus uteri), and ovaries. Cervical cancers occur more often in African-American women than in white women, whereas white women are more likely to develop endometrial and ovarian cancers. The incidence of endometrial and ovarian cancer also depends on age, with older women at greater risk. Human papillomavirus infection is the most important risk factor for cervical cancer. Diet, a family history of the disease, and breast cancer are among the risk factors for endometrial and ovarian cancers. NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and cancers of the female reproductive system.

In Update 2002, NAS reported that the environmental study involving Chapaevsk, Russia (Revich et al., 2001) appeared to show an increased risk of cervical cancer, but noted that the number of cases on which the rates were calculated was not provided and may have been small, and further noted that the potential for confounding by socioeconomic factors was not addressed.

NAS noted that the Kang et al. (2000) environmental study on gynecologic cancers among female Vietnam veterans provided some evidence that service in Vietnam does not substantially increase the risk of uterine, ovarian or cervical cancer, but the report made no attempt to examine exposures to herbicides or TCDD in Vietnam.

NAS found that no strong studies addressing female reproductive cancers

in relation to herbicides or their contaminants had been conducted since Update 2000. They concluded that there was no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and cancers of the female reproductive system.

Taking account of the available evidence and NAS'' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and cancers of the female reproductive system outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Urinary Bladder Cancer**

Urinary bladder cancer is the most common of the genitourinary tract cancers. Bladder cancer incidence increases greatly with age over 40 years. The most important known risk factor for bladder cancer is smoking. Occupational exposures to aromatic amines (also called arylamines), polycyclic aromatic hydrocarbons (PAHs), and certain other organic chemicals used in the rubber, leather, textile, paint products, and printing industries are also associated with higher incidence of bladder cancer. High-fat diets have been implicated as risk factors, along with exposure to the parasite Schistosoma haematobium. Exposure to inorganic arsenic is also a risk factor for bladder cancer, and cacodylic acid is a metabolite of inorganic arsenic. The data remain insufficient to conclude that studies of inorganic arsenic exposure are directly relevant to exposure to cacodylic acid. Therefore, NAS did not consider the literature on inorganic arsenic.

NAS noted in VAO and Update 1996 that there was limited or suggestive evidence of no association between exposure to herbicides used in Vietnam or the contaminant dioxin and urinary bladder cancer. NAS, beginning with Update 1998, changed that conclusion to inadequate or insufficient information regarding an association.

In Update 2002, NAS reviewed an updated occupational study of mortality in Dow chemical workers potentially exposed to herbicides (Burns CJ, Beard KK, Cartmill JB. 2001. Mortality in chemical workers potentially exposed to 2,4-dichlorophenoxyacetic acid (2,4-D) 1945–1994: an update. Occupational and Environmental Medicine 58(1):24–30), which found no increased risk of mortality due to bladder cancer.

NAS also reviewed Revich *et al.* (2001), in which an increase in age-adjusted bladder cancer incidence was shown in Chapaevsk compared to the Samara Region of the Russian Republic. NAS noted, however, that the study did not control for occupation and smoking history, and there was no information on the number of cases included in the analysis or the completeness of surveillance for cancer in Chapaevsk and the Samara region.

In Update 2002, NAS concluded that there is no evidence to support changing the ''inadequate or insufficient'' categorization for bladder cancer.

Taking account of the available evidence and NAS'' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and urinary bladder cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Renal Cancer**

Renal cancer is twice as common in men as in women. With the exception of Wilm's tumor, which is more likely to occur in children, renal cancer is more common in individuals over age 50. Smoking is a well-established risk factor for renal cancer. Other potential risk factors include diet, weight, and occupational exposure to asbestos and cadmium. Firefighters, who are routinely exposed to the decomposition of organic substances caused by a rise in temperature, are a known higher-risk group.

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and renal cancer.

In Update 2002, NAS reviewed an updated occupational study of mortality in Dow chemical workers potentially exposed to herbicides (Burns *et al.*, 2001), which concluded that there was no evidence of an association between exposure to 2,4–D and mortality due to renal cancer. NAS noted that this study has low precision due to the small number of deaths from renal cancer.

NAS also reviewed the results of Revich *et al.* (2001), which found age-adjusted incidence of renal cancer to be similar between Chapaevsk and the Samara region. Incidence rates of renal cancer in all of Russia was slightly lower. However, NAS noted that no information was given on the number of cases in the calculation of those incidence rates or the stability of those rates in previous years, and does not consider confounders other than age.

NAS stated that there is no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and renal cancer.

Taking account of the available evidence and NAS analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and renal cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Testicular Cancer**

Testicular cancer is far more likely in men younger than 40 than in those who are older. Undescended testicles is a major risk factor for testicular cancer. Family history of the disease also appears to be a risk factor for testicular cancer.

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and testicular cancer.

In Update 2002, NAS reviewed an update of an occupational study of mortality in chemical workers at Dow Chemical Company (Burns *et al.*, 2001). One death from testicular cancer was identified among 1,517 male Dow employees. The study concluded that there is no significant risk of testicular cancer in this cohort. NAS concluded that the updated study analysis provided no evidence to suggest that chronic herbicide exposure increases the risk of testicular cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and testicular cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Leukemia (Other than chronic lymphocytic leukemia (CLL))**

There are four primary types of leukemia: The acute and chronic forms of lymphocytic leukemia and the acute and chronic forms of myeloid (or granulocytic) leukemia.

Acute lymphocytic leukemia (ALL) is a disease of the young and of individuals older than 70, and plays a small role in the age groups that characterize most Vietnam veterans. Exposure to high doses of ionizing radiation is a known risk factor. Acute myeloid leukemia (AML) is the most

common leukemia among adults. Risk factors for AML include high doses of ionizing radiation, occupational exposure to benzene, and some medications used in cancer chemotherapy. Genetic disorders including Fanconi's anemia and Down's syndrome are associated with an increased risk for AML. Tobacco smoking has been suggested as a risk factor.

The incidence of chronic myeloid leukemia (CML) increases with age for individuals over 30. For individuals in the age groups that characterize most Vietnam veterans, CML accounts for about one in five leukemias. CML is associated with an acquired chromosomal abnormality known as the ''Philadelphia chromosome.'' Exposure to high doses of ionizing radiation is a known risk factor for that abnormality.

NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and leukemia. Because CLL, the most common form of leukemia, shares many traits with lymphomas, NAS reviewed it separately from the other leukemias in Update 2002.

In Update 2002, NAS reviewed one new occupational study (Burns *et al.*, (2001)) which reported data on a cohort male workers involved in the manufacture or formulation of 2,4–D. Mortality from leukemia in the entire cohort was similar to rates in all U.S. males. Similar results were obtained in an analysis based on a 20-year induction period. In the comparison with nonexposed workers, an excess in lymphopoietic mortality was noted in workers with high-cumulative-dose exposure to 2,4–D. NAS noted, however, that at least some of the deaths may have been due to Hodgkin's disease or multiple myeloma.

In another occupational study, cancer incidence and mortality were assessed in a cohort of 504 forestry workers in Sweden who were characterized by presence or absence of exposure to phenoxy herbicides in 1954–1967 (Thorn A, Gustavsson P, Sadigh J, Westerlund-Hannerstrand B, Hogstedt C 2000. Mortality and cancer incidence among Swedish lumberjacks exposed to phenoxy herbicides. Occupational and Environmental Medicine 57:718–720). No cases of leukemia occurred in the exposed members of this cohort.

In an environmental study, Revich *et al.* (2001) analyzed data on cancer incidence and mortality in Chapaevsk, Russia. Mortality due to leukemia during the years 1995–1998 was compared with mortality in the Samara region as a whole. Age-adjusted incidences during 1998 were reported for leukemia and lymphoma combined. The rates in Chapaevsk were lower than in the Samara region in men but higher in women. NAS noted a number of weaknesses contained in this study, including failure to report the actual number of cases, failure to calculate confidence intervals, and lack of adjustment for factors other than age.

NAS found no compelling or consistent evidence of an association with exposure to herbicides contained in the new reports reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether as association exists between exposure to herbicides and leukemia (other than CLL).

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and leukemia (other than CLL) outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Abnormal Sperm Parameters and Infertility**

NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and altered sperm parameters or infertility.

In Update 2002, NAS reviewed the results of an environmental study which assessed whether exposure to heavy metals, PCBs, volatile organic compounds, and polycyclic aromatic hydrocarbons is related to early reproductive effects. (Staessen JA, Nawrot T, Hond ED, Thijs L, Fagard R, Hoppenbrouwers K, Koppen G, Nelen V, Schoeters G, Vanderschueren D, Van Hecke E, Verschaeve L, Vlietinck R, Roels HA. 2001. Renal function, cytogenetic measurements, and sexual development in adolescents in relation to environmental pollutants: a feasibility study of biomarkers. Lancet 357(9269):1660–1669. [Comment in Lancet 2001. 358(9295):1816–1817.]) The study compared 100 17-year-old lifetime residents of two highly exposed suburbs of Antwerp, Belgium, with 100 17-year-old lifetime residents of a rural control community. Concentrations of several environmental agents, including dioxin-like compounds in serum samples, were found to be higher in the two suburban locations than in the control community, after adjustment for sex, body-mass index (BMI), weeks of breastfeeding, parental social class, and dietary fat intake. NAS noted that the results indicate that children in the two suburban locations experienced substantial and statistically significant delays in sexual maturation and lower testicular volume. NAS further noted that the results of this study support a potential effect on male reproductive capacity, but that the implication for Vietnam veterans remains unclear, inasmuch as most veterans were past their pubertal development during their tours of duty.

NAS also discussed a review of medical literature (Figá-Talamance I, Traina ME, Urbani E. 2001. Occupational exposures to metals, solvents, and pesticides: recent evidence on male reproductive effects and biological markers. Occupational Medicine 51(3): 174–88.), the authors of which concluded that there is insufficient evidence to conclude that the use of pesticides leads to significantly higher risk to human reproduction.

NAS stated that there is no information in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and altered sperm parameters or infertility.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and reproductive effects in veterans outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Parkinson's Disease and Parkinsonism**

Because of the increasing concern that a link exists between Parkinson's disease (PD) and various chemicals used in herbicides, NAS, in VAO and subsequent reports, suggested that as Vietnam veterans move into the age groups when PD is more prevalent, attention be given to the frequency and character of new cases of PD in exposed versus nonexposed individuals.

NAS noted in VAO and subsequent reports that there is inadequate or insufficient information to determine whether an association exists between exposure to herbicides and PD.

In Update 2002, NAS reviewed an occupational study in which 238 subjects exposed to pesticides in an occupational setting and 72 nonexposed controls were examined for the presence of parkinsonism. (Engel LS, Checkoway H, Keifer MC, Seixas NS, Longstreth WT, Scott KC, Hudnell K, Anger WK, Camicioli R. 2001. Parkinsonism and occupational exposure to pesticides.

Occupational and Environmental Medicine 58:582–589.) NAS stated that the overall results of this study are similar to those of many other studies reviewed in Update 2000, in which an association with many years of occupational exposure is associated with parkinsonism but no association is found with any individual pesticide or class of pesticides.

NAS also reviewed a prospective cohort study with 30 years of follow up on 7,986 Japanese-American men (Honolulu Heart Program) who worked on sugar cane and pineapple plantations in Hawaii to determine whether working on a plantation or exposure to pesticides is associated with an increased risk of PD. (Petrovich *et al.* (2002, in press).) The study showed that as the duration of work increased, pesticide exposure increased significantly. NAS stated that even though age-adjusted incidence of PD increased with increasing pesticide exposure, the trend was not significant. Those with over 20 years of plantation work had twice the risk of PD of those with no plantation work. With 10 years of plantation work or less, there was no increase in risk of PD, but a significant trend of increased risk occurred with further years of exposure.

NAS noted that an association of PD with exposure to 2,4–D, 2,4,5–T, or TCDD is not reported in any of the studies.

Based on the totality of the evidence, NAS concluded that there remains inadequate or insufficient evidence of an association between exposure to herbicides and PD.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and PD outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Amyotrophic Lateral Sclerosis (ALS)**

ALS is a progressive motor neuron disease with adult onset that presents with muscle atrophy, weaknesses, and fasciculations. The incidence of ALS peaks between the ages of 55 to 75 years. Known risk factors for ALS are age and a family history of ALS. Interest in the role of occupational or environmental exposure originated in cases of motor neuron disease associated with exposure to heavy metals, chemical plants, animal carcasses, heavy manual labor, work with electricity, pneumatic tools, work in the plastic industry, and work as a truck driver.

In Update 2002, NAS summarized the results of five epidemiologic studies of pesticide exposure and ALS. One study found the association between pesticides and ALS was not statistically significant but was positive. (Deapen DM, Henderson BE. 1986. A case-control study of amyotrophic lateral sclerosis. American Journal of Epidemiology 123:790–799.) In another study, no statistically significant associations were found between ALS and several risk factors, including agricultural chemicals and organic solvents, although there was a positive association between ALS and agricultural chemicals. (Savettieri G, Salemi G, Arcara A, Cassata M. Castiglione MG, Fierro B. 1991. A case-control study of amyotrophic lateral sclerosis. Neuroepidemiology 10:242–245.)

A case-control epidemiologic study in Scotland of 103 ALS cases from a Scottish motor neuron disease register and 103 age- and sex-matched controls identified risk factors for development of the disease. (Chancellor AM, Slattery JM, Fraser H. 1993. Risk factors for motor neuron disease: A case-control study based on patients from the Scottish motor neuron disease register. Journal of Neurology, Neurosurgery, and Psychiatry 56:1200–1206.) Significant differences with increased exposure in cases were found for occupational exposure to lead and ''solvent/chemicals.'' NAS noted that occupational pesticide exposure was not significantly different but did have a positive association.

The results of a mortality study of male employees of the Dow Chemical Company (Burns *et al.*, 2001) showed three deaths due to ALS. The study found a significantly increased relative risk of death due to ALS. All three died more than 20 years after their first exposure; duration of employment was 1.3, 1.8, and 12.5 years.

A population-based case-control epidemiologic study was conducted to examine the relationship between ALS and occupational exposures to metals, solvents, and agricultural chemicals. (McGuire V, Longstreth WT, Nelson LM, Koepsell TD, Checkoway H. Morgan MS, van Belle G. 1997. Occupational exposure and amyotrophic lateral sclerosis: A population-based case-control study. American Journal of Epidemiology 145:1076–1088.) Exposure to metals and solvents was not associated with ALS. Association between exposure to agricultural chemicals and ALS was observed in men. Exposure to specific agricultural chemicals, such as herbicides, did not pose a significantly increased risk of ALS. Excess exposure to agricultural chemicals from accidents or spills was associated with ALS, but this accounted for six cases and only three controls. NAS noted that the careful attention to exposure assessment in this study makes the association between agricultural chemicals and ALS intriguing, but that there are few exposed subjects and further studies are needed.

NAS concluded that there is inadequate or insufficient evidence of an association between exposure to herbicides and motor neuron disease or ALS.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and ALS outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Chronic Persistent Peripheral Neuropathy**

NAS noted in VAO and subsequent reports that there was inadequate or insufficient evidence of an association between exposure to herbicides and chronic persistent peripheral neuropathy.

A publication relating serum TCDD and peripheral neuropathy from the 1982, 1985, 1987, 1992, and 1997 examinations of the Ranch Hand study found significantly increased risk of peripheral neuropathy among Ranch Hand veterans in the high-exposure category in 1997. (Michalek JE, Akhtar FZ, Arezzo JC, Garabrant DH, Albers JW. 2001. Serum dioxin and peripheral neuropathy in veterans of operation ranch hand. Neurotoxicology 22:479–490.) NAS noted a major problem in the interpretation of TCDD effects on the peripheral nerves in light of the presence of diabetes and preclinical diabetes in the majority of the cases identified. NAS also noted that the cases of probable and possible peripheral neuropathy were identified for the first time in 1992 and 1997, with prior examinations being normal. NAS determined that these findings weakened the ability to implicate TCDD exposure as the etiologic agent given that the peripheral nerve is known to repair itself after cessation of exposure or after diminution of the body burden of the responsible toxicant.

NAS concluded that there remains inadequate or insufficient evidence of an association between exposure to herbicides and chronic persistent peripheral neuropathy.

Taking account of the available evidence and NAS' analysis, the

Secretary has found that the credible evidence against an association between herbicide exposure and chronic persistent peripheral neuropathy outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Lipid and Lipoprotein Disorders**

Plasma lipid (notably cholesterol) concentrations have been shown to predict cardiovascular disease and are considered fundamental to the underlying atherosclerotic process. The two major types of lipids, cholesterol and triglycerides, are carried in the blood attached to proteins to form lipoproteins. NAS in VAO and subsequent reports found there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and lipid and lipoprotein disorders.

An occupational study of 92 workers at a municipal waste incinerator in Japan included measures of serum polychlorinated dibenzo-p-dioxins (PCDD) and self-reported history of a number of diseases and health-related conditions. (Kitamura K, Kikuchi Y, Watanabe S, *et al.* Health effects of chronic exposure to polychlorinated dibenzo-p-dioxins (PCDD), dibenzofurans (PCDF) and coplanar PCB (Co-PCB) of municipal waste incinerator workers. Journal of Epidemiology 2000;10:262–270.) Eight of the 92 subjects reported having been diagnosed with high cholesterol.

NAS noted that this study's contribution to the literature is limited for a number of reasons: the study is cross-sectional, so there is no opportunity to establish that the exposure clearly preceded the outcome; the sample is small; the exposure is an aggregate measure of PCDD (with TCDD as only one component); and the measure of high cholesterol is based solely on self-report. NAS stated that, because of those limitations, the study does not change the inconclusive status of the epidemiologic evidence on the relationship between exposure to herbicides and high serum lipids.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and lipid and lipoprotein disorders outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Gastrointestinal and Digestive Disease, Including Liver Toxicity**

Gastrointestinal and digestive disease includes diseases of the esophagus, stomach, intestines, rectum, liver, and pancreas. NAS, in VAO and subsequent reports, found there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and gastrointestinal and digestive disease, including liver toxicity.

An occupational study reported on two cases of heavy TCDD intoxication, and presented a 2-year follow-up. (Geusau A, Abraham K, Geissler K, Sator MO, Stingl G. Tschachler E. 2001. Severe 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) intoxication: clinical and laboratory effects. Environmental Health Perspectives 109(8):865–869.) One patient, a 30-year-old woman, presented with chloracne and had the highest TCDD concentration ever recorded in a human. The other patient was a 27-year-old woman who worked in the same room as the first patient. Both patients experienced gastrointestinal symptoms, including nausea, vomiting, epigastric pain, and loss of appetite, which lasted about 4 months. Liver function studies were within the normal limits, except for one value in the first patient of alkaline phosphatase at 1.5 times the upper limit of normal. Apart from the chloracne and gastrointestinal symptoms, few clinical signs or symptoms were observed in the acute phase of the intoxication.

In a report evaluating hepatic abnormalities in Vietnam veterans of Operation Ranch Hand, the authors examined exposure to TCDD and the prevalence of liver disease and hepatomegaly through March 1993 in relation to tests of liver function at the 1992 physical examination. (Michalek JE, Ketchum NS, Longnecker MP. 2001. Serum dioxin and hepatic abnormalities in veterans of Operation Ranch Hand. Annals of Epidemiology 11(5):304–311.) Hepatomegaly among veterans in the high-exposure category was slightly higher than that in nonexposed veterans in the comparison category. The prevalence of nonspecific liver disorders increased across categories of TCDD exposure and among Ranch Hands in the high-exposure category. The study authors and NAS noted that the significance of those findings may be limited because heightened levels of the enzyme GGT, an abnormality sometimes reported in association with TCDD exposure, may also be caused by alcohol consumption, and the mean GGT in the high-exposure group was significantly increased among veterans with history of light to moderate drinking. The authors concluded that evidence of clinically significant liver disease was limited to the increase in hepatomegaly, and that the increased GGT could have been due to confounding.

NAS stated that the evaluation of the effects of herbicide exposure on noncancer gastrointestinal ailments is very difficult, due to limitations of medical history and physical examination in diagnosing such ailments and the strong interdependence between individual characteristics of a person and the body burden of TCDD.

NAS concluded that there was no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and gastrointestinal and digestive diseases.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and gastrointestinal and digestive disease outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Immune System Disorders**

The immune system is responsible for protecting the body against invasion by infectious microorganisms. NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and immune system disorders.

No relevant occupational, environmental, or Vietnam-veteran studies were published subsequent to Update 2000.

NAS concluded that there was no information reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and immune system disorders.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between immune system disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Circulatory Disorders**

NAS noted in VAO and subsequent reports that there was inadequate or

insufficient information to determine whether an association exists between exposure to herbicides and circulatory disorders.

In Update 2002, NAS noted that there is growing evidence that exposure to inorganic arsenic is a risk factor for cardiovascular disease, and cacodylic acid (DMA) is a metabolite of inorganic arsenic. However, the data remain insufficient to conclude that studies of inorganic arsenic exposure are directly relevant to exposure to cacodylic acid. Therefore, the literature on inorganic arsenic was not considered by NAS.

NAS reviewed an occupational study of mortality in male workers at a Dow chemical plant (Burns *et al.*, 2001). NAS stated that mortality due to circulatory conditions among the workers was similar to that experienced by U.S. white males in general. NAS noted that mortality analyses of other occupational cohorts have tended to find cardiovascular effects among the more highly exposed workers, but that a dose-specific analysis of the data on this outcome was not reported.

A cross-sectional occupational study was conducted in 1998 to assess the association between serum PCDD and a variety of health conditions in a sample of workers employed at a municipal waste incinerator in Japan (Kitamura *et al.*, 2000). Fourteen of the 92 workers participating in the study reported a history of hypertension. No information was provided on the date of this diagnosis relative to dates of employment at the plant. The coefficients for the categories of PCDD were reported as not statistically significant, but the values of the coefficients and their standard errors were not given.

In an environmental study, a survey was administered to 727 adult residents of farming households and 262 residents of nonfarming households. (Masley ML, Semchuk KM, Senthilselvan A, at al. Health and environment of rural families: results of a community canvass survey in the Prairie Ecosystem Study. Journal of Agricultural Safety and Health 2000;6:103–115.) The survey included questions about the use of pesticides and fertilizers and a number of health conditions and symptoms that might be associated with agricultural exposures. Physician-diagnosed hypertension and heart disease were reported by 154 and 44 survey respondents, respectively. Neither condition was associated with residing on a farm. No information was provided on the validity of measurement of the self-reported health conditions, and the report did not examine more specific associations with pesticide or fertilizer use.

NAS noted that neither Kitamura *et al.* (2000) nor Masley *et al.* (2000) provided data on validation from medical records or direct measurement of blood pressure, that some misclassification is likely (with false negatives being more common than false positives), and that both studies used nonspecific assessment of exposure. NAS further noted the possibility that the null findings on hypertension in these studies reflect the influence of misclassification that led to bias toward the null.

Mortality from cardiovascular diseases was examined by Revich *et al.* (2001) in their study of multiple health outcomes among the residents of Chapaevsk. The authors reported that mortality from cardiovascular diseases in men was 1.14 times greater than the mortality rate for Russia as a whole, and that the difference in mortality was especially pronounced in men 30 to 49 years old. The authors also noted, however, that trends in mortality were directly related to trends in unemployment, which NAS noted suggests the simultaneous effects of other aspects of the environment in the area.

NAS concluded that there is no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and circulatory disorders.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and circulatory disorders outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Respiratory Disorders**

The major risk factor for both acute and chronic respiratory disorders is cigarette smoking. Cigarette smoking is a major confounding factor in interpreting the literature on risk factors for respiratory disease. NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and nonmalignant respiratory disorders.

In Update 2002, NAS reviewed an occupational study of a cohort of male employees of the Dow Chemical Company (Burns *et al.*, 2001). No excess mortality from nonmalignant respiratory disorders was demonstrated.

NAS concluded that there is no information contained in the research reviewed for Update 2002 to change the conclusion that, except for respiratory cancers, there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and respiratory disorders.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and respiratory disorders other than respiratory cancers outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Skin Cancer**

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and skin cancer. NAS discussed the evidence concerning two categories of skin cancer: Melanoma and nonmelanoma (basal-cell and squamous-cell).

In Update 2002, NAS reviewed an occupational study of mortality in a cohort of male Dow Chemical Company workers (Burns *et al.*, 2001). No deaths due to skin cancer of any type were reported in the study.

NAS also reviewed an occupational study which analyzed cancer incidence and mortality in a cohort of forestry workers in Sweden (Thorn *et al.*, 2000). The observed frequency of cancer was compared with expected values on the basis of data on the population of Sweden. One case of melanocytic skin cancer was recorded in an exposed female worker. Nonmelanocytic skin cancer was diagnosed in one exposed foreman, and in three nonexposed workers. The report found increased risks for both types of skin cancer, but the findings were not statistically significant and were limited by the small number of cases.

An environmental study analyzed cancer incidence and mortality in Chapaevsk, Russia (Revich *et al.*, 2001). Mortality data were not reported for skin cancer. The age-adjusted incidence of melanoma in Chapaevsk relative to the Samara region during 1998 was somewhat lower in men but notably higher in women. The age-adjusted incidence of skin cancers other than melanoma was similar in men and somewhat higher in women. NAS noted that the number of cases was not given, hypothesis testing and interval

estimation were not performed, and no confounding factors were considered besides age. NAS noted that the lack of complete information prevented conclusions based on the study.

NAS stated that the new studies add little information on the association between exposure to herbicides and the incidence of skin cancer.

NAS concluded that there is no information contained in the research reviewed for Update 2002 to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and skin cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and skin cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Cognitive and Neuropsychiatric Effects**

NAS noted in VAO and subsequent reports that there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and cognitive and neuropsychiatric effects.

Results of a Vietnam veteran study of cognitive functioning from an Air Force Health Study (AFHS) examination in 1982 were reviewed by NAS in Update 2002. (Barrett DH, Morris RD, Akhtar FZ, Michalek JE. 2001. Serum dioxin and cognitive functioning among veterans of operation ranch hand. Neurotoxicology 22:491–502.) NAS noted that cognitive functioning in the Ranch Hand veterans evaluated with about 33 measures assessed through a variety of tests found eight significant group differences that did not support a dose-effect relationship with TCDD; that is, worse performance was seen in the background or low-TCDD groups. Ranch Hand veterans with the highest TCDD exposure had significantly lower scores on Logical Memory (Wechsler Memory Scale Form 1 (WMS)). NAS stated that finding could be attributed to chance alone and was not in agreement with other administered tests of verbal memory. NAS further stated that overall, the significant weaknesses in the study design, analyses, and interpretation of the results in the examination of serum TCDD and cognitive functioning in the Ranch Hand veterans prevent an association between exposure and neuropsychologic effects from being established.

In Update 2002, NAS reviewed a 30-year follow-up occupational study of 13 men in Czechoslovakia with TCDD exposure during the production of 2,4,5–T. (Pelclova D, Fenclova Z, Dlaskova Z, Urban P, Lukas E, Prochazka B, Rappe C. 2001. Biochemical, neuropsychological, and neurological abnormalities following 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) exposure. Archives of Environmental Health 56:493–500.) TCDD was correlated significantly with the memory quotient from WMS, the verbal IQ from the Wechsler Adult Intelligence Scale-Revised (WAIS–R), and the Benton test of visual memory. Age-corrected norms were used to determine abnormal performance. Education did not affect the results, but no demographic data on education were presented. Ten of 13 subjects drank alcohol daily, but this was not taken into account in the analyses. NAS reported that the low-voltage electroencephalogram with increased beta activity seen in 7 subjects could be related to the daily alcohol consumption. NAS further noted that it is not possible to determine the relationship between TCDD and cognitive functioning without attention to confounding.

An environmental study (Gauthier E, Fortier I, Courchesne F, Pepin P, Mortimer J, Gauvreau D. 2001. Environmental pesticide exposure as a risk factor for Alzheimer's disease: A case-control study. Environmental Research Section A 86:37–45) found that long-term exposure to herbicides and insecticides was not significantly related to the development of Alzheimer's disease. Occupational exposure to neurotoxic substances, including pesticides, was also not significantly related to Alzheimer's disease.

NAS concluded that there is still inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and cognitive and neuropsychiatric effects.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and cognitive and neuropsychiatric effects outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Gastrointestinal Tract Tumors**

The incidence of stomach, colon, rectal, and pancreatic cancers increases with age for individuals between 45 and 59 years old. Other risk factors vary for these cancers but always include family history of the same form of cancer, certain diseases of the affected organ, and dietary factors.

NAS noted in VAO and subsequent reports that there was limited or suggestive evidence of no association between exposure to herbicides and gastrointestinal (GI) tract tumors.

An occupational study (Burns *et al.*, 2001) of mortality of male employees of the Dow Chemical Company found fewer deaths than expected from all malignant neoplasms and specifically cancers of the digestive organs and peritoneum.

An environmental study of residents of Chapaevsk, Russia (Revich *et al.*, 2001) showed a higher incidence of colon cancer in males than Russia as a whole or the Samara region of Russia. Female residents of Chapaevsk did not have a higher incidence. However, female residents of Chapaevsk did have a higher incidence of stomach cancer than Russia or Samara. Male residents of Chapaevsk had a lower incidence of stomach cancer than Russia, but higher than Samara. Both male and female residents of Chapaevsk had a lower incidence of rectal cancer than Russia or Samara. NAS stated that, because of the lack of adjustment for confounding, the likelihood of multiple exposures, the absence of information on the completeness and accuracy of cancer diagnoses, and the ecologic study design, this study provides little evidence for associations with gastrointestinal cancers.

NAS concluded that there was no new evidence to change the previous determination that there is limited or suggestive evidence of no association between exposure to herbicides and gastrointestinal tract cancer.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and gastrointestinal tract cancer outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Brain Tumors**

Exposure to ionizing radiation is an established risk factor for brain cancer. Several other potential factors have been examined, but most brain cancers are not associated with any known risk factors. Brain cancer occurs relatively infrequently.

NAS noted in VAO and subsequent reports that there was limited or suggestive evidence of no association between exposure to herbicides and brain tumors.

Two occupational studies published since Update 2000 were reviewed by

NAS in Update 2002. Both studies (Burns *et al.*, 2001; Thorn *et al.*, 2000) demonstrated no excess mortality from brain cancer. NAS noted, however, that both studies were small and had limited power to detect an increase in an uncommon outcome.

NAS concluded that there was no new evidence to change the previous determination that there is limited or suggestive evidence of no association between exposure to herbicides and brain tumors.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and brain tumors outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**AL Amyloidosis**

Amyloidosis refers to a group of diseases in which insoluble fibrillar proteins (amyloid) accumulate in tissues to a point that causes organs to malfunction. NAS reviewed AL amyloidosis (also sometimes referred to as primary amyloidosis), in which the light chain of immunoglobulin molecules is the aberrant protein. AL amyloidosis is the most common form of amyloidosis in the United States.

NAS in Update 2000 found there was inadequate or insufficient information to determine whether an association exists between exposure to herbicides and AL amyloidosis.

No relevant occupational, environmental, or Vietnam-veteran studies have been published since Update 2000.

NAS concluded that there is no information to change the conclusion that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and AL amyloidosis.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and amyloidosis outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Endometriosis**

NAS reviewed endometriosis for the first time in Update 2002.

Endometrium is the tissue that lines the inside of the uterus. In endometriosis, endometrium is found outside the uterus, usually in other parts of the reproductive system, the abdomen, or the tissues near the reproductive organs, and results in inflammation, internal bleeding, and degeneration of blood and tissue which can cause scarring, pain, infertility, adhesions, and intestinal problems. The cause of endometriosis is unknown.

Suspicion that TCDD is involved in the etiology of endometriosis began after the observation that the incidence of endometriosis was higher in monkeys treated with low doses of TCDD than in control monkeys.

In Update 2002, NAS reviewed a study which analyzed blood TCDD concentrations in 79 women who were being evaluated for infertility, 44 of whom were diagnosed with endometriosis by laparoscopy. (Mayani A, Barel S, Soback S, and Almagor M. 1997. Dioxin concentration in women with endometriosis. Human Reproduction. 12:373–375.) Eight of the 44 women with endometriosis were positive for TCDD compared with one of the 35 controls. NAS noted that the number of subjects in this study is small, the ethnic distribution differed, and the limit of TCDD detection was not clear. Although the study reported an increased risk, the confidence interval was very wide and the finding was not statistically significant.

Another study assessed whether TCDD toxic equivalents (TEQs) in serum are associated with endometriosis in an infertile population of women who enrolled in fertility treatment. (Pauwels A, Schepens PJ, D'Hooghe T, Delbeke L, Dhont M, Brouwer A, Weyler J. 2001. The risk of endometriosis and exposure to dioxins and polychlorinated biphenyls: A case-control study of infertile women. Human Reproduction. 16:2050–5.) The case-control study evaluated 42 women with endometriosis and 27 controls without endometriosis, but with infertility related to other causes. The authors reported no association between median total TEQs and endometriosis in infertile women.

NAS concluded that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and endometriosis.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and endometriosis outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

**Thyroid Homeostasis**

NAS reviewed the thyrotoxic potential of herbicides for the first time in Update 2002.

The thyroid gland secretes hormones (T4 and T3) which stimulate metabolic rate. Secretion of T4 and T3 is under the control of thyroid-stimulating hormone (TSH), which is secreted by the anterior pituitary gland. The thyroid also secretes calcitonin, a hormone that controls calcium concentration in the blood and storage of calcium in bones. Chemical-induced alterations in thyroid homeostasis can adversely affect the development of many organ systems, including the nervous and reproductive systems. Most adverse effects are caused by lack of thyroid hormone alone rather than by increases in TSH. TCDD affects the concentrations of thyroid hormones; the effects appear to be species-dependent and may reflect both the dose and the duration of exposure. TCDD influences the metabolism of thyroid hormones and TSH. Studies of environmental exposure have emphasized thyroid alterations in prenatal and early childhood development rather than in adults.

One environmental study reviewed by NAS evaluated 38 mother-infant pairs, selected for normal birth weight and no complications. (Pluim HJ, Koppe JG, Olie K, Vd Slikke JW, Kok JH, Vulsma T, Van Tijn D, De Vijlder JJ. 1992. Effects of dioxins on thyroid function in newborn babies. Lancet. 339:1303.) In cord blood, the concentrations of total T4 and thyroxine-binding globulin (TBG) were suggestively higher in the high exposure group, but no other measurements approached significance. At 1 week, total T4 and the ratio of total T4 to TBG were significantly greater in the high-exposure than the low-exposure group, and the same was true at 11 weeks. TSH concentrations were also significantly higher at 11 weeks. When only infants who were breastfed for the full 11 weeks were considered, only the ratio of total T4 to TBG remained significantly different. In a subset of the births for which values were obtained in both the cord and 1-week samples, the increases in total T4 and in TBG were substantially higher in the high-exposure group. NAS stated that concerns about those results are related to the size of the study sample and the loss of nearly one-fourth of the maternal-blood samples and five of the cord-blood samples for all thyroid measurements. Several more samples were insufficient for some of the analyses.

A larger study of 105 mother-infant pairs conducted similar analyses. (Koopman-Esseboom C, Morse DC, Weisglas-Kuperus N, Lutkeschipholt IJ, Van der Paauw CG, Tuinstra LG, Brouwer A, Sauer PJ. 1994. Effects of dioxins and polychlorinated biphenyls

on thyroid hormone status of pregnant women and their infants. Pediatric Research. 36:468–73.) TEQ correlated negatively with maternal pregnancy total T3 and maternal postdelivery total T3 and total T4; similar associations were seen for planar PCB TEQ and total PCB and TEQ, and the associations with total T3 were also observed for nonplanar PCB TEQ. In addition, all four TEQ measurements correlated positively with infant 2-week TSH, and all except the nonplanar PCB TEQ were positively associated with the infant 3-month TSH.

Another environmental study examined PCB concentrations in breast-milk specimens, without adjustment for lipids, in relation to thyroid hormones in cord serum in a population with background exposure. (Longnecker MP, Gladen BC, Patterson DG, Rogan WJ. 2000. Polychlorinated biphenyl (PCB) exposure in relation to thyroid hormone levels in neonates. Epidemiology 11:249–254.) They found little evidence of an association, although the direction of the coefficient for TSH in multiple-regression analysis was consistent with findings in other studies: increases in TSH with increases in PCBs. NAS stated that because non-dioxin-like PCBs are the most abundant, and PCBs are contaminated with furans, this study is not very informative for the effects of TCDD or the herbicides used in Vietnam.

Another environmental study examined TCDD-exposed workers at two plants who were engaged in the production of 2,4,5-T or one of its derivatives. (Calvert GM, Sweeney MH, Deddens J, Wall DK. 1999. Evaluation of diabetes mellitus, serum glucose, and thyroid function among United States workers exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin. Occupational and Environmental Medicine 56(4):270–276.) Referents were residents in the neighborhood of each worker, matched by age, race, and sex. Serum specimens were analyzed for TCDD, total T4, TSH, and thyroid hormone binding resin, and the free T4 index was calculated. The results showed that workers had a significantly higher adjusted mean free T4 index than referents, and the highest index was among those with the highest half-life extrapolated TCDD, but a clear dose-response relationship was not observed.

A Vietnam veteran study examined thyroid-hormone status in the AFHS cohort. (Pavuk M, Schecter AJ, Akhtar FZ, Michalek JE. Serum 2,3,7,8–Tetrachlorodibenzo-p-dioxin (TCDD) Levels and Thyroid Function in Air Force Veterans of the Vietnam War (in press).) At each of the 1982, 1985, 1987, 1992, and 1997 examinations, there was a trend toward an increasing concentration of TSH, which was not accompanied by changes in circulating T4 or in the percentage uptake of T3 (measured only in the earlier years). In a repeated-measures linear regression adjusted for age, race, and military occupation, the low-exposure and high-exposure Ranch Hands had TSH significantly higher than the comparison population. There was no evidence of changes in clinical thyroid disease. The percentage with abnormally high TSH was higher at each examination in the high-exposure group than in the comparison population, but these findings were not very precise.

After reviewing the relevant literature, NAS stated that although some effects on thyroid homeostasis have been observed, mainly in the perinatal period (the period shortly before and after birth), the functional importance of those changes is unclear because adaptive capacity may be adequate to accommodate them. NAS noted that the AFHS study demonstrated biologic changes in TSH levels, but without any accompanying effect on the health of the Ranch Hand veterans. NAS further stated that the evidence indicates that both infants and Ranch Hand personnel were able to adapt to the changes that may have been induced by higher body burdens of TCDD.

NAS concluded that there is inadequate or insufficient evidence to determine whether an association exists between exposure to herbicides and adverse effects on thyroid homeostasis.

Taking account of the available evidence and NAS' analysis, the Secretary has found that the credible evidence against an association between herbicide exposure and adverse effects on thyroid homeostasis outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS reviewed scientific and medical articles published since the publication of its first report as an integral part of the process that resulted in ''Veterans and Agent Orange: Update 2002.'' The comprehensive review and evaluation of the available literature which NAS conducted in conjunction with its report has permitted VA to identify all conditions for which the current body of knowledge supports a finding of an association with herbicide exposure. Accordingly, the Secretary has determined that there is no positive association between exposure to herbicides and any other condition for which he has not specifically determined that a presumption of service connection is warranted.

Approved: May 8, 2003.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

[FR Doc. 03–12593 Filed 5–19–03; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### National Commission on VA Nursing; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Commission on VA Nursing will hold its fifth meeting on June 11–12, 2003, at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. On Wednesday, June 11, the meeting will begin with registration at 8:30 a.m. and adjourn at 5 p.m. On Thursday, June 12, the meeting will begin at 8 a.m. and adjourn at 2 p.m. The meeting is open to the public.

The purpose of the Commission is to provide advice and make recommendations to Congress and the Secretary of Veterans Affairs regarding legislative and organizational policy changes to enhance the recruitment and retention of nurses and other nursing personnel in VA. The Commission is required to submit to Congress and the Secretary of Veterans Affairs a report, not later than two years from May 8, 2002, on its findings and recommendations.

On June 11, the Commission will discuss the findings of several recent surveys on nurse turnover and work environment, and will review testimony from Commission hearings held during April. On June 12, the Commission will focus most of its work on finalizing its interim report.

No time will be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Commission in advance of the meeting, to Ms. Oyweda Moorer, Director of the National Commission on VA Nursing, at Department of Veterans Affairs (108N), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Ms. Stephanie Williams, Program Analyst at (202) 273–4944.

Dated: May 13, 2003.

By Direction of the Secretary.

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. 03–12594 Filed 5–19–03; 8:45 am]

BILLING CODE 8320–01–M

# Corrections

Federal Register

Vol. 68, No. 97

Tuesday, May 20, 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 HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Clinical Center; Notice of Meeting

*Correction*

In notice document 03–12091 appearing on page 26325 in the issue of Thursday, May 15, 2003, make the following correction:

On page 26325, in the third column, in the second paragraph, in the second line, ''closed'' should read, ''open''.

[FR Doc. C3–12091 Filed 5–19–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
May 20, 2003

# Part II

# Environmental Protection Agency

## 40 CFR Part 63

## National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[OAR 2002–0083; FRL–7460–2]**

**RIN 2060–AE48**

## National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action promulgates national emission standards for hazardous air pollutants (NESHAP) for integrated iron and steel manufacturing facilities. The final standards establish emission limitations for hazardous air pollutants (HAP) emitted from new and existing sinter plants, blast furnaces, and basic oxygen process furnace (BOPF) shops. The final standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT).

The HAP emitted by integrated iron and steel manufacturing facilities include metals (primarily manganese and lead with small quantities of other metals) and trace amounts of organic HAP (such as polycyclic organic matter, benzene, and carbon disulfide). Exposure to these substances has been demonstrated to cause adverse health effects, including chronic and acute disorders of the blood, heart, kidneys, reproductive system, and central nervous system.

**EFFECTIVE DATE:** May 20, 2003. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register as of May 20, 2003.

**ADDRESSES:** *Docket.* The official public docket is the collection of materials used in developing the final rule and is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Phil Mulrine, Metals Group (C439–02), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5289, electronic mail (e-mail) address, *mulrine.phil@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Regulated Entities.* Categories and entities potentially regulated by this action include:

| Category | NAICS code * | Example of regulated entities |
|---|---|---|
| Industry | 331111 | Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, BOPF shops. |
| Federal government | | Not affected. |
| State/local/tribal government | | Not affected. |

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7781 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0083. 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 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 Air 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 Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. *Electronic Docket Access.* You may access the final rule 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 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 in the above paragraph entitled ''Docket.'' Once in the system, select ''search,'' then key in the appropriate docket identification number. *Worldwide Web* (*WWW*). In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

*Judicial Review.* This action constitutes final administrative action on the proposed NESHAP for integrated iron and steel manufacturing facilities (66 FR 36836, July 13, 2001). Under CAA section 307(b)(1), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 21, 2003. Under CAA section 307(b)(2), the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

*Outline.* The information presented in this preamble is organized as follows:

I. Background
II. Summary of Final Rule
A. Who must comply with the final rule?
B. What are the affected sources and emission points?
C. What are the emission limitations?
D. What are the operation and maintenance requirements?
E. What are the general compliance requirements?
F. What are the initial compliance requirements?
G. What are the continuous compliance requirements?

H. What are the notification, recordkeeping, and reporting requirements?
I. What are the compliance deadlines?
III. Summary of Responses to Major Comments
A. How did we develop the MACT floors?
B. What surrogates did we use for HAP?
C. Is a risk analysis warranted?
D. How did we revise the emission limitations?
E. How did we revise the performance test requirements?
F. How did we revise the cost estimates and economic analysis?
IV. Summary of Environmental, Energy, and Economic Impacts
A. What are the air emission impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental and energy impacts?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

## I. Background

Section 112(d) of the CAA requires us (the EPA) to establish national emission standards for all categories and subcategories of major sources of HAP and for area sources listed for regulation under section 112(c). Major sources are those that emit or have the potential to emit at least 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. Area sources are stationary sources of HAP that are not major sources. Additional information on the NESHAP development process can be found in the preamble to the proposed rule (66 FR 36836).

We received a total of 16 comment letters on the proposed NESHAP from industry and trade association representatives, State agencies, industry experts, environmental groups, universities, and private citizens. We offered to provide interested individuals the opportunity for oral presentations of data, views, or arguments concerning the proposed rule, but a public hearing was not requested.

Today's final rule reflects our full consideration of all the comments we received. Major public comments on the proposed rule along with our responses to these comments are summarized in section III of this document. A detailed response to all the comments is included in the Background Information Document (BID) for the Promulgated Standards (Docket ID No. OAR–2002–0083).

## II. Summary of Final Rule

### *A. Who Must Comply With the Final Rule?*

Each owner or operator of an affected source at an integrated iron and steel manufacturing facility that is (or is part of) a major source of HAP emissions must comply with the final rule.

### *B. What Are the Affected Sources and Emission Points?*

The affected sources are each new or existing sinter plant, blast furnace, and BOPF shop at an integrated iron and steel manufacturing facility that is (or is part of) a major source of HAP emissions. Emission limitations apply to the sinter plant windbox exhaust, discharge end, and sinter cooler; the blast furnace casthouse; and the BOPF shop including each furnace and ancillary operations (hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy). These processes, as well as their emissions and controls, are described in the preamble to the proposed rule (66 FR 36838–36839).

### *C. What Are the Emission Limitations?*

The final rule includes particulate matter (PM) emission limits and opacity limits as well as operating limits for capture systems and control devices. An operating limit also applies either to the oil content of the sinter plant feedstock or to the volatile organic compound (VOC) emissions from the sinter plant windbox exhaust stream. Particulate matter and opacity serve as surrogate measures of HAP emissions.

1. Sinter Plants

The PM emission limits for a windbox exhaust stream are 0.4 pounds per ton (lb/ton) of product sinter for an existing sinter plant and 0.3 lb/ton for a new sinter plant. The final rule limits PM emissions from a discharge end to 0.02 grains per dry standard cubic foot (gr/dscf) for an existing plant and 0.01 gr/dscf for a new plant. The discharge end PM limits are a flow-weighted average when multiple control devices are operated in parallel. A 20 percent opacity limit applies to fugitive emissions from a discharge end at an existing sinter plant; a 10 percent opacity limit applies to a new sinter plant (both are 6-minute averages). The PM emission limits for sinter cooler stacks are 0.03 gr/dscf for an existing plant and 0.01 gr/dscf for a new plant. If the sinter cooler is vented to the same control device as the discharge end, the PM limit is 0.02 gr/dscf for an existing plant and 0.01 gr/dscf for a new plant.

2. Blast Furnaces

The PM emission limits for a control device applied to emissions from a casthouse are 0.01 gr/dscf for an existing blast furnace and 0.003 gr/dscf for a new blast furnace. The opacity limits for fugitive emissions from a casthouse are 20 percent for an existing blast furnace and 15 percent for a new blast furnace (both are 6-minute averages).

3. BOPF Shops

For primary emissions from BOPF, different PM emission limits apply based on the type of hood system (closed or open). For BOPF with closed hood systems at a new or existing BOPF shop, the PM emission limit is 0.03 gr/dscf, and it only applies during periods of primary oxygen blow. The primary oxygen blow is the period in which oxygen is initially blown into the furnace and does not include any subsequent reblows. For BOPF with open hood systems, the PM emission limits are 0.02 gr/dscf for an existing BOPF shop and 0.01 gr/dscf for a new BOPF shop. These emission limits apply during all periods of the steel production cycle. The steel production cycle begins when the furnace is first charged with scrap and ends 3 minutes after slag is removed. The BOPF limits are a flow-weighted average when multiple control devices are operated in parallel.

The PM emission limits for a control device applied solely to secondary emissions from a BOPF are 0.01 gr/dscf for an existing BOPF shop and 0.0052 gr/dscf for a new BOPF shop. Secondary emissions are those not controlled by the primary emission control system, including emissions that escape from open and closed hoods and openings in the ductwork to the primary control system.

For the BOPF shop, the PM emission limit for a control device applied to emissions from ancillary operations (hot metal transfer, skimming, and desulfurization) is 0.01 gr/dscf for an existing BOPF shop and 0.003 for a new BOPF shop. The PM emission limits for ladle metallurgy operations are 0.01 gr/dscf for an existing BOPF shop and 0.004 gr/dscf for a new BOPF shop.

For the BOPF roof monitor, a 20 percent opacity limit applies to fugitive emissions from the BOPF or BOPF shop operations in an existing BOPF shop. This opacity limit is based on 3-minute

averages. For a new BOPF shop housing a bottom-blown furnace, a 10 percent opacity limit applies (6-minute average) except that one 6-minute period not to exceed 20 percent may occur once during each steel production cycle. For a new BOPF shop housing a top-blown furnace, a 10 percent opacity limit applies (3-minute average) except that one 3-minute period greater than 10 percent but less than 20 percent may occur once during each steel production cycle.

4. Capture Systems

We revised the requirements for capture systems to allow plants to choose operating parameters appropriate for assessing capture system performance, establish the values or settings for the parameters, and designate monitoring requirements. At a minimum, the limits must indicate the level of the ventilation draft and damper position settings. Plants must include information to support their selected parameter(s) in their operation and maintenance plan (including other process configurations that may be used) and certify in their performance test report that during the tests, the capture system operated at the limit(s) established in their plan.

5. Operating Limits

For bag leak detection systems, we require that corrective actions be initiated within 1 hour of a bag leak detection system alarm. For a venturi scrubber, the hourly average pressure drop and scrubber water flow rate must remain at or above the level established during the initial performance test. Plants using an electrostatic precipitator (ESP) must install and operate a continuous opacity monitoring system (COMS) according to Performance Specification 1 in 40 CFR part 60, appendix B. The average opacity for each 6-minute period must remain at or below the site-specific limit. The final rule uses a statistical approach, requiring that the limit be based on the COMS average corresponding to the 99 percent upper confidence limit on the mean of a normal distribution of average opacity values established during the initial performance test. Plants must submit information on monitoring parameters if another type of control device is used.

The final rule requires sinter plants to maintain the oil content of the feedstock at or below 0.02 percent. This limit is based on a 30-day rolling average. We are including an alternative VOC limit of 0.2 pound of VOC per ton (lb/ton) of sinter produced. This limit is also based on a 30-day rolling average.

*D. What Are the Operation and Maintenance Requirements?*

All plants subject to the final rule must prepare and implement a written startup, shutdown, and malfunction plan according to the requirements in 40 CFR 63.6(e). A written operation and maintenance plan is also required for capture systems and control devices subject to an operating limit. This plan must describe procedures for monthly inspections of capture systems, preventative maintenance requirements for control devices, and corrective action requirements for baghouses. To avoid potential implementation issues, we have added specific descriptions of the equipment to be inspected and a requirement to correct any deficiency or defect as soon as practicable. In the event of a bag leak detection system alarm, the plan must include specific requirements for initiating corrective action to determine the cause of the problem within 1 hour, initiating corrective action to fix the problem within 24 hours, and completing all corrective actions needed to fix the problem as soon as practicable. If applicable, the plan also must include procedures for determining and recording the sinter plant production rate.

*E. What Are the General Compliance Requirements?*

The final rule requires compliance with the emission limitations and operation and maintenance requirements at all times, except during periods of startup, shutdown, and malfunction as defined in 40 CFR 63.2. The owner or operator must develop and implement a written startup, shutdown, and malfunction plan according to the requirements in 40 CFR 63.6(e)(3).

The final rule also requires keeping a log detailing the operation and maintenance of the process and emission control equipment. This requirement applies during the period between the compliance date and the date that continuous monitoring systems are installed and any operating limits set.

*F. What Are the Initial Compliance Requirements?*

The final rule requires performance tests to demonstrate that each affected source meets all applicable emission and opacity limits. The final rule allows the owner or operator to conduct representative sampling of stacks where there are more than three stacks associated with a process (subject to approval by the permitting authority). The PM concentration (front-half filterable catch only) is to be measured using EPA Method 5, 5D, or 17 in 40 CFR part 60, appendix A. The EPA Method 9 in 40 CFR part 60, appendix A, is required for determining the opacity of emissions, with instructions for computing 6-minute and 3-minute block averages.

The final rule also includes procedures for establishing site-specific operating limits for control devices during the performance test. We have also included procedures to be followed during opacity tests to ensure capture systems operate at the limits established in the operation and maintenance plan.

The final rule requires a performance test to demonstrate initial compliance with the operating limit for the oil content of the sinter plant feedstock using OSW 846 Method 9071B (Revision 2, April 1998). Plants must sample for 30 consecutive days and compute the 30-day rolling average for each operating day. Plants electing the alternative operating limit must conduct a performance test by sampling VOC emissions and analyzing the samples according to EPA Method 25 in 40 CFR part 60, appendix A. Plants may use an alternative method that has been previously approved by the permitting authority in lieu of OSW 846 Method 9071B for oil content or EPA Method 25 for VOC emissions.

To demonstrate initial compliance with the operation and maintenance requirements, owners or operators must prepare the operation and maintenance plan, certify in the performance test report that capture systems operated at the limits established in the operation and maintenance plan, and submit their notification of compliance status. In the notification of compliance status, the owner or operator must certify that the capture systems will be operated at the limits established in the plan.

*G. What Are the Continuous Compliance Requirements?*

Plant owners or operators must conduct PM and opacity performance tests at least twice during each title V operating permit term (at midterm and renewal). Owners or operators also must monitor operating parameters for capture systems and control devices subject to operating limits, and carry out the procedures in their operation and maintenance plan.

To demonstrate continuous compliance with the operating limit for the oil content of sinter plant feedstock, owners or operators must determine the oil content every 24 hours (from the composite of at least three samples taken at 8-hour intervals) and compute

and record the 30-day rolling average percent oil content of sinter feed for each operating day. Plants electing the alternative limit must determine VOC emissions every 24 hours (from at least three samples taken at 8-hour intervals) and compute and record the 30-day rolling average emissions (in lb/ton of sinter) for each operating day.

The final rule requires a continuous parameter monitoring system (CPMS) to measure and record operating parameters for capture systems subject to an operating limit. Dampers that are manually set and remain in the same position are exempt from the CPMS requirement. For dampers that are not manually set and remain in the same position, the final rule requires a daily visual check (every 24 hours) to verify they are in the correct positions.

For baghouses, owners or operators are required to monitor the relative change in PM loading using a bag leak detection system and make inspections at specified intervals. The bag leak detection system must be installed and operated according to the EPA guidance document ''Fabric Filter Bag Leak Detection Guidance,'' EPA 454/R–98–015, September 1997. The document is available on the TTN at *http://www.epa.gov/ttnemc01/cem/tribo.pdf*. If the system does not work based on the triboelectric effect, it must be installed and operated consistent with the manufacturer's written specifications and recommendations. The basic inspection requirements include daily, weekly, monthly, or quarterly inspections of specified parameters or mechanisms with monitoring of bag cleaning cycles by an appropriate method. To demonstrate continuous compliance, the final rule requires records documenting conformance with the operation and maintenance plan, as well as the inspection and maintenance procedures.

For venturi scrubbers, owners or operators must use CPMS to measure and record the hourly average pressure drop and scrubber water flow rate. For ESP, owners or operators must use COMS to measure and record the average opacity of emissions exiting each stack of the control device for each 6-minute period. Owners or operators must operate and maintain the COMS according to the requirements in 40 CFR 63.8 and Performance Specification 1 in 40 CFR part 60, appendix B. These requirements include a quality control program including a daily calibration drift assessment, quarterly performance audit, and annual zero alignment.

The final rule requires owners or operators to prepare a site-specific monitoring plan for CPMS that addresses installation, performance, operation and maintenance, quality assurance, and recordkeeping and reporting procedures. These requirements replace the more detailed performance specifications contained in the proposed rule.

To demonstrate continuous compliance, owners or operators must keep records documenting compliance with the monitoring requirements (including installation, operation, and maintenance requirements for monitoring systems) and the operation and maintenance plan.

*H. What Are the Notification, Recordkeeping, and Reporting Requirements?*

The notification, recordkeeping, and reporting requirements are based on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 4 to subpart FFFFF lists each of the requirements in the General Provisions (§§ 63.2 through 63.15) with an indication of whether they apply.

The plant owner or operator must submit each initial notification required in the NESHAP General Provisions that applies to their facility. These include an initial notification of applicability with general information about the facility and notifications of performance tests, performance evaluations, and compliance status.

Owners or operators are required to maintain the records required by the NESHAP General Provisions that are needed to document compliance, such as performance test results; copies of startup, shutdown, and malfunction plans and associated corrective action records; monitoring data; and inspection records. Except for the operation and maintenance plan for capture systems and control devices, all records must be kept for a total of 5 years, with the records from the most recent 2 years kept onsite. The final rule requires that the operation and maintenance plan for capture systems and control devices subject to an operating limit be kept onsite and available for inspection upon request for the life of the affected source or until the affected source is no longer subject to the final rule requirements.

We clarified the recordkeeping requirements required to demonstrate compliance with the operating limit for sinter plants. The final rule requires records of the sampling date and time, sampling values (oil content or VOC measurements), sinter produced (tons/day), and the 30-day rolling average for each operating day.

Semiannual reports are required for any deviation from an emission limitation (including an operating limit) or operation and maintenance requirement. Each report is due no later than 30 days after the end of the reporting period. If no deviation occurs, only a summary report is required. If a deviation does occur, more detailed information is required.

An immediate report is required if actions taken during a startup, shutdown, or malfunction are not consistent with the startup, shutdown, and malfunction plan. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to the authority with delegation for enforcement that the source was operating in accordance with the startup, shutdown, and malfunction plan.

*I. What Are the Compliance Deadlines?*

The owner or operator of an existing affected source must comply by May 22, 2006. An existing affected source is one constructed or reconstructed before July 13, 2001. We changed the compliance date for existing affected sources from 2 years to 3 years after the effective date because some plants must install new capture and control systems and perform significant upgrades of primary emission control systems.

In the final rule, we have corrected a printing error that incorrectly listed the date defining a new affected source as July 23, 2001. A new affected source is one constructed or reconstructed on or after July 13, 2001. New or reconstructed sources that startup on or before the effective date of today's final rule must comply by May 20, 2003. New or reconstructed sources that startup after the effective date of the final rule must comply upon initial startup.

## III. Summary of Responses to Major Comments

*A. How Did We Develop the MACT Floors?*

We stated in the proposal preamble that we may take alternative approaches to establish a MACT floor, depending on the type, quality, and applicability of available data. The three approaches most commonly used involve: (1) Reliance on State regulations or permit limits in conjunction with emission test data; (2) use of emissions test data alone to estimate actual emissions; and (3) use of control technology information in conjunction with emission test data to estimate actual emissions performance. In practice, regardless of what approach we select, we attempt to ensure that our emissions performance estimates reasonably characterize the level of performance that the relevant sources

consistently achieve, considering normal operational variability.

*Comment.* One commenter contends that EPA may use State regulations or permit limits to set floors only to the extent that such regulations and limits provide a demonstrably accurate picture of the relevant best source's actual performance. The commenter also states that EPA may only use the performance of a chosen floor technology to set floors if such technology is the only factor influencing the relevant best sources' actual performance. In addition, the floor must reflect actual performance, not what EPA thinks is achievable with a particular technology. The commenter concludes that all of EPA's floors suffer from the same basic defect in that ''. . . they do not represent the actual performance of the relevant best sources.''

*Response.* While EPA may use any reasonable approach to estimate the emissions control achieved in practice by the best-controlled similar source and the average emissions limitation achieved by the best-performing 12 percent of units in a category (or best 5 units for categories of less that 30 sources), we generally agree with the commenter that it is preferable to use actual performance test data to determine the MACT floor when there are adequate such data available to reasonably characterize the level of performance of the relevant sources. Our approach to identifying the MACT floors and establishing emission limits for the various emission points at integrated iron and steel facilities is consistent with this preference. Nonetheless, we did use State regulations and permit limits in some instances to help us estimate the MACT floor level of performance for certain emission points for which we have limited emission test data. However, in each case where we used such information, we also evaluated the available emission test data and other factors (such as type of control technology and the design parameters that affect performance) to confirm that the State limits reasonably reflect the actual performance of the best units.

In those instances where we had a sufficient quantity of emission test data to reasonably estimate the performance of the relevant best units, we applied a statistical approach to confirm and refine the emission estimates from proposal. This process involved application of a statistical approach to determine the average emission limitation achieved and account for normal operational variability. As described below, this approach ensures that the emissions estimates used to identify the MACT floors reasonably reflect the level of control that is actually achieved by the relevant units over time, and under the most adverse foreseeable circumstances. (The full supplemental analysis is documented in the docket.) We had adequate test data to apply this approach to the emission limits for the sinter plant windboxes, casthouse control devices, primary control systems on open and closed hood BOPF, and control devices applied to hot metal transfer, desulfurization, and ladle metallurgy.

For each of these emission points we confirmed and refined our earlier estimates of the performance of the relevant best-performing units used to identify the MACT floors. At proposal, we estimated the performance of the best-controlled sources by identifying the best control technology that had been demonstrated for each source. We then evaluated the available data for sources using the best control technology and established emission limits for new and existing sources based on the level of control that sources with the technology had achieved.

Conceptually, our approach to estimating the performance of the best-controlled units is relatively straightforward. While we believe each emissions source test gives a good indication of the level of control achieved by the control device during the time of the emissions test, we do not believe a single emissions source test can be used as an estimate of the long term emissions performance achieved by that source. Normal variations in process and control device performance and other factors, such as the inherent imprecision of sampling and analysis, which cannot be controlled, will result in variability in the performance of every source over time, including the best-performing sources. We believe that the MACT floor performance level must reasonably account for the ordinary variability in the performance of the best-controlled sources over time and under the most adverse circumstances which can reasonably be expected to occur. As such, the MACT floor performance limit must include a consideration for the variability inherent in the process operations and the control device performance.

For today's final rule, when emissions source test data were available, we used a statistical method to confirm and refine the emission estimates used at proposal to identify the MACT floors for the relevant units. For each case where emissions source test data were available, we estimated the emissions limitation achieved for each source at the 95th percentile using the one-sided z-statistic test (*i.e.*, the emission limitation which the emission point is estimated to be able to achieve 95 percent of the time). Assuming a normal distribution, the 95th percentile is 1.645 standard deviations above the mean. We chose the median of the 95th percentiles of the top-performing sources as the MACT floor. We used the median as the most representative estimate of the average emission limitation achieved by the best-performing five sources because the median points to the performance of an actual unit, with a specific combination of process operations and control device performance.

We evaluated several options to estimate the standard deviation that is needed to perform the analysis. We decided not to estimate the standard deviation for each source based on the available emissions data for just that one source since we have only three data points for most sources to use in estimating the standard deviation-one data point for each run in a three run emissions source test. Instead, we calculated a relative standard deviation (RSD) for each test and then averaged the RSD to provide our best estimate of the variability of the test data. The RSD is the standard deviation divided by the mean. The RSD provides a way to estimate the standard deviation for different values of the mean when there are too few data points to calculate the standard deviation directly. We believe this method adequately accounts for the normal variability in emissions source test data and provides a reasonable estimate of the long term emissions limitation achieved.

For new sources, the MACT floor is the emissions control that is achieved in practice by the best-controlled similar source. In order to confirm and refine our emissions estimates for new sources, we identified the best-controlled source based on test data and applied the same statistical techniques to determine the emission limitation achieved in practice for new sources. We calculated the upper 95th percentile of performance for the best-controlled source, and we chose this value as the emission limitation that can be achieved by new sources.

We believe the statistical technique used to account for general variability is appropriate and reasonable. However, we also recognize that some of the empirical test data may imply a level of accuracy that is not present throughout the entire data set. As a result, we have some reservations about identifying a MACT floor with a level of accuracy that is not warranted by the underlying data. Accordingly, we have concluded

that it is appropriate in some instances to round the results to two decimal places. This approach encompasses the specific statistically-derived numbers, while acknowledging that there is some residual uncertainty about the representativeness of the data. Thus, while we believe generally that our use of the 95th percentile adequately identifies the range of actual performance of individual facilities, our rounding approach should alleviate any concerns regarding whether the statistics sufficiently capture the full range of ordinary performance of the best-performing units over time and under the most adverse circumstances that can be reasonably expected to occur.

Changes resulting from rounding will have no practical effect on how industry responds to the emission limitations. That is, the control technology needed is exactly the same and the equipment must be operated in the same manner regardless of whether the numbers are rounded or not. A properly designed and operated control device will still be required to meet the rounded emission limit. Today's final rule has provisions for operating parameters and operation and maintenance plans to ensure proper operation. Thus, other than serving to better reflect uncertainties in the underlying data, the rounding has no practical impact on the stringency of the requirements.

Additional information on the statistical analysis used to confirm and refine our emissions estimates, including the data used and the complete ranking of sources, is available in the docket.

The objective of both the MACT floor methodology used at proposal, and the methodology used here to confirm and refine the proposed estimates of performance, is exactly the same. For each relevant operation at integrated iron and steel facilities, both approaches expressly are intended to provide a quantified estimate of the emission performance of the best-controlled similar source, or of the average emission limitation achieved by the relevant best-performing sources in the category, taking into consideration the ordinary and unavoidable variations in process operations and performance of the emissions control equipment.

Moreover, the conclusions growing from the supplemental statistical analysis, regarding the levels of performance that reflect the MACT floor for both new and existing units, in large measure simply confirm that the analysis underlying the proposal provided a reasonable estimation of performance.

Indeed, none of the refinements to our performance estimates will have any practical effect on how industry responds to the emission limitations. As is the case with our decision to round the emission estimates, any changes in the emission limitations in the final rule will require the same control technology as would have been needed to meet the proposed limits, and the control equipment will need to be operated in the same manner as would have been the case with the proposed emission limitations.

For three emission points (sinter cooler, sinter plant discharge end, and control devices for BOPF fugitive emissions), we had only one or two test results. Consequently, we did not have an adequate set of emissions test data to directly estimate the actual performance of the top-performing sources. Consequently, we developed the floors for these three emission points based on the facilities subject to the most stringent State regulations or permit limits, and we used the available emissions information (emissions data and a characterization of the operational processes and emissions controls) to confirm that the identified State limits reasonably reflect the actual performance of the relevant best-performing units. That is, the best units are able to achieve the required State limits but are not consistently achieving a level of emissions performance that is more stringent than the State limits. The EPA may use State limits as long as we demonstrate that such limits provide a reasonable estimate of the actual performance of the best-performing sources.

For floors based on State opacity regulations that limit fugitive emissions, we collected additional data and found that sources are achieving a level of performance that is within the current limits, but they are not consistently achieving a level of control more stringent than the identified State limits. Consequently, we believe these State limits provide an accurate picture of the best sources' actual performance considering inherent and unavoidable variability. We used this approach to develop the MACT floor for opacity from the sinter plant discharge end, blast furnace casthouse, and BOPF shop.

We provide additional rationale in the following sections where we discuss in detail the development of the MACT floors for each emission point.

1. Sinter Plant Windbox Exhaust

*Comment.* One commenter stated that EPA proposed an emission limitation of 0.3 lb/ton of PM based on the performance of either a baghouse or scrubber. According to the commenter, EPA's floor does not reflect the actual performance of the relevant best sources—the average emission limitation achieved by the top five sources. As shown in the BID, the average emission limitation achieved by the best-performing five sources is 0.079 pound per ton (lb/ton), not the proposed limit of 0.3 lb/ton. Second, floor reflects what EPA believed to be achievable with the control technologies and not the actual performance of the relevant best sources. Third, EPA admits that several factors other than the performance of the technologies influence emissions.

*Response.* As we documented in appendix B of the BID, the floor for sinter plant windboxes was based on actual source test data and the five best-performing sources. We collected test data and verified that EPA Method 5 (40 CFR part 60, appendix A) was used. We ranked the results (in lb/ton of sinter) and calculated the average of the five best-performing sources (0.3 lb/ton). Contrary to the commenter's assertion, we did not rely on control technology to identify the best-performing units or to estimate the performance of the best units. In this particular case, we had adequate test data to directly estimate the average emission limitation achieved by the five best-performing sources.

The calculation performed by the commenter is inappropriate and does not provide an accurate estimate of the emission limitation achieved by the plants. The commenter misinterpreted the information in the BID, which is not source test data, but is simply a best estimate of annual average emissions based on approximate emissions factors and the assumption that all plants operate continuously at their design capacity. Such an estimate cannot be used to represent actual performance in a MACT floor calculation.

After proposal, we reviewed our approach for developing the MACT floor and concluded that our original analysis did not sufficiently account for the normal and unavoidable variability inherent in the process operations and emission control equipment (as demonstrated by the emission test data). The average performance of the five best-performing sinter plants ranged from 0.26 to 0.32 lb/ton of sinter. To account for inherent variability, we applied the z-statistic to estimate the 95th percentile of a normal distribution for each source. The median of the 95th percentiles of the five best-performing sources is 0.4 lb/ton, which we chose to represent the MACT floor. This level of performance reasonably reflects the

average emission limitation achieved by the five best-performing sources considering inherent variability. The best-controlled source averaged 0.26 lb/ton with a 95th percentile of 0.3 lb/ton, which represents the MACT floor for new sources.

2. Sinter Plant Limit on Oil Content

*Comment.* Two commenters stated that the proposed limit on oil content of 0.025 percent was based on the highest oil percentage of any of the four plants for which EPA had oil percentage data. They claim this is not a valid approach because it does not represent the actual performance of the relevant best sources. One commenter recommended that EPA consider beyond-the-floor technologies for dioxin emissions, such as elimination of rolling mill scale from sinter feed, de-greasing of sinter plant feed, quality control of water used in sinter plant feed preparation, and use of low-organic waterborne rolling mill lubricants.

*Response.* Our research indicates that emissions of organic compounds from sinter plant windboxes are controlled by limiting the amount of oil in the sinter feed. Emission control devices applied to sinter plants are designed primarily for the removal of PM and not for the various organic compounds that are formed from the oil. We believe that oil content is the most significant factor affecting organic compound HAP emissions. Consequently, we identified the MACT floor for organic HAP emissions from sinter plants based on the level of oil content that we observed for the sinter plants with the best programs to control oil in the sinter feed.

We obtained data from four sinter plants that have implemented a program to control the oil content of the sinter feed. We then examined the data and evaluated the variability to determine the level of control that has been achieved. The average results for oil content for each plant ranged from 0.014 to 0.025 percent. These are the best-performing plants because they were the only ones that routinely sample for oil content. We applied the z-statistic and estimated the 95th percentile for each plant. (The statistical analysis considered that the limit is based on a 30-day rolling average, which reduces the inherent variability as indicated by a lower standard deviation than that associated with a single analysis of oil content.) The median of the 95th percentiles for the top-performing plants is 0.022 percent. We rounded this value to 0.02 percent, and this level represents the MACT floor for existing units. The best-performing source averaged 0.014 percent oil with a 95th percentile of 0.015 percent. We rounded this value to 0.02 percent, and this level represents the MACT floor for new units.

We reviewed opportunities for control beyond the floor. We do not believe it is practical or feasible to eliminate rolling mill scale from the sinter feed. The sinter plant provides the only opportunity to recycle and recover the raw material value. Otherwise, the mill scale would be landfilled. De-greasing or de-oiling the sinter feed has been investigated by the industry, but there is no demonstrated technology in use at any sinter plant that has proven to be successful. There is no indication that the water used in preparing the sinter feed contributes to the oil content; therefore, water quality control is not expected to have an impact on emissions of organic compounds. Waterborne lubricants may have some advantages in certain applications. However, they are problematic in some applications in the demanding environment of steel rolling mills. We could find no indication that the practices cited by the commenter have been demonstrated to reduce dioxin or other organic compound emissions. Consequently, we selected a limit on oil content as the MACT floor. We believe it is more appropriate to set a performance standard that limits oil content rather than mandating a technology that an owner or operator must use to reduce oil content. The performance standard for oil content will encourage owners or operators to investigate technologies that reduce oil content to find the most effective approach for their specific situation.

*Comment.* Six commenters object to the proposed limit on oil content because EPA has not shown that it is achievable by the best-performing sinter plants under the most adverse anticipated circumstances over time.

*Response.* As we discussed in our previous response, we confirmed and refined the MACT floor estimates using a statistical approach to account for inherent variability. Based on this approach, we believe the MACT floor has been achieved on a continuing basis by the best-performing units. In addition, the limit is enforced based on a 30-day rolling average, which further enhances achievability because it allows an occasional high daily value to be averaged with lower values on other days to achieve compliance. A 30-day rolling average also provides time to take corrective action and lower the oil content before the limit is exceeded.

3. PM Standard for Blast Furnace Casthouse Control Device

*Comment.* One commenter stated that the technology approach used to develop the floor does not reflect the actual performance of the relevant best sources. The commenter further states that EPA admits that there are factors other than the type of control technology that affect the actual emission control performance of blast furnace casthouse control devices. Specifically, factors affecting emissions include duration of tapping, exposed surface area of metal and slag, length of runners, and the presence or absence of runner covers or flame suppression. Thus, the performance of a baghouse cannot be representative of the best sources's actual performance.

*Response.* We proposed a PM standard of 0.009 gr/dscf for blast furnace casthouse control devices based on the performance of existing units using baghouses. We re-evaluated the emissions test data for blast furnace casthouses based on the statistical approach previously discussed in order to confirm and refine our emissions estimates for the best-performing units. We have test data for fugitive emissions from source tests at four casthouses. The available data clearly indicate that a baghouse is the best technology for controlling emissions from blast furnace casthouses. We reviewed the test data and the design features of these baghouses (such as air-to-cloth ratio), and we concluded that the baghouses that had been tested were among the best-performing units. The test results ranged from 0.002 to 0.0072 gr/dscf. We calculated the 95th percentile for each plant. The median of the 95th percentiles for the top-performing plants is 0.005 gr/dscf. We rounded this value to two decimal places and chose 0.01 gr/dscf to represent the MACT floor level of control for existing sources.

The best-controlled source averaged 0.002 gr/dscf with a 95th percentile of 0.0034 gr/dscf. We rounded the 95th percentile to 0.003 gr/dscf to represent the MACT floor for new sources.

4. PM Standard for BOPF Primary Control Devices

*Comment.* One commenter stated that the chosen floor technologies do not represent the actual performance of the relevant best sources.

*Response.* We proposed a PM limit of 0.019 gr/dscf for new and existing open hood BOPF primary control systems based on the performance of existing units using ESP. We re-evaluated the emissions test data for open hood BOPF using the statistical approach previously

discussed, in order to confirm and refine our emissions estimates for the best-performing units. The available data clearly indicate that ESP perform better than venturi scrubbers in controlling emissions from open hood shops. We have test data for five ESP that are similar in design, each of which, based on design and operating data, are among the best-performing units at open hood shops. The data include multiple tests at some plants, and these data indicate there is variability in performance from test to test and from run to run. The plant averages ranged from 0.007 to 0.019 gr/dscf, and individual tests (three-run averages) ranged from 0.004 to 0.019 gr/dscf. We calculated the 95th percentile for each plant. The median of the 95th percentiles for the top-performing plants is 0.019 gr/dscf. We rounded this value to two decimal places and chose 0.02 gr/dscf to represent the MACT floor for existing units.

The best-controlled open hood shop averaged 0.0066 gr/dscf with a 95th percentile of 0.01 gr/dscf, which we chose to represent the MACT floor for new sources.

We proposed a limit of 0.024 gr/dscf for new and existing closed hood BOPF primary control systems based on the performance of existing units using venturi scrubbers. All of the closed hood shops use venturi scrubbers as the primary control device. The test data and design information indicated that shops having high-energy venturi scrubbers with a pressure drop of 50 inches of water or more are the best-performing sources. We have recent test data for only one closed hood shop. However, we have data from 1971 to 1978 for high-energy venturi scrubbers on closed hood shops. These data include four BOPF shops that are currently operating. The test results range from 0.021 to 0.024 gr/dscf. For purposes of today's final rule, we did not include Kaiser Steel because the plant has been closed for several years. We calculated the 95th percentile for each plant. The median of the 95th percentiles for the top-performing plants is 0.027 gr/dscf. We rounded this value to two decimal places and chose 0.03 gr/dscf to represent the MACT floor for existing sources.

The best-controlled closed hood shop averaged 0.021 gr/dscf with a 95th percentile of 0.027 gr/dscf. We rounded the 95th percentile to two decimal places and chose 0.03 gr/dscf to represent the MACT floor for new sources.

*Comment.* Six commenters said EPA used test data dating from 1971 through 1978 to establish the limit for closed hood systems. These commenters believe the data do not reflect current configurations or actual performance and cannot be used to establish the floor. Many systems have been upgraded to increase capture efficiency (including some furnaces used to establish the standard). Because there are little or no data for these sources, the commenters recommend that EPA use existing State implementation plans (SIP) to determine the floor. Another commenter agrees, adding that the test data used to support the 0.024 gr/dscf limit ranged up to 0.031 gr/dscf and represent the minimum anticipated variation of emissions from a MACT floor technology source. The proposed limit is more stringent than existing SIP and may not be achievable by plants using MACT floor controls. The analysis does not consider the current PM limit of 0.03 gr/dscf for plants in Ohio, which the commenter believes should be the limit.

*Response.* The test data for closed hood shops are not just from tests in 1971 to 1978—there is a 1992 test for Geneva Steel. The commenters did not provide any information on the nature of the upgrades or rationale as to their effect on emissions. For closed hood systems, testing is performed only during the oxygen blow with the capture hood tightly fitted to the furnace. Our understanding is that capture system upgrades have been made primarily to improve the capture of fugitive emissions from charging and tapping, which are not included in the performance testing for closed hood furnaces. In addition, the operating conditions of the scrubbers during the tests (*e.g.*, pressure drops of 50 inches of water or more) are representative of the way these scrubbers are currently operated. Data for venturi scrubbers in other similar processes indicate that high-pressure drop scrubbers can achieve control levels of 0.03 gr/dscf or less. We believe the statistical approach that we used to confirm and refine emissions estimates for the floor analysis accounts for inherent variability over time. We believe that source test data provide a better picture of actual performance than the use of State limits as the commenter suggests. Moreover, based on our analysis of the emission tests, we have identified as MACT an emissions limit of 0.03 gr/dscf which is consistent with the emissions limits that the commenters identified as appropriate.

5. PM Standards for Ancillary Operations at BOPF Shops

*Comment.* According to eight commenters, the three data points for hot metal transfer and desulfurization are not sufficient to define the floor, accurately represent current operating conditions, or reflect a level that is consistently achievable under the most adverse foreseeable circumstances over time. If sufficient data are not available, EPA should use existing State limits, if it can show that the level of control is realistically achievable under the most adverse anticipated circumstances over time. The commenters also question that the data used for characterizing performance were collected using the same test procedures specified in the proposed rule (average of three 1-hour tests during actual operation of the processes). Using data from a test method other than the required compliance method to set a standard does not meet CAA requirements.

*Response.* We proposed a PM standard of 0.007 gr/dscf for a control device serving BOPF ancillary processes based on the performance of existing units using baghouses. We reviewed the emissions data and confirmed the tests were conducted using EPA Method 5 (40 CFR part 60, appendix A). Every test result was presented as the average of three runs, which is consistent with our performance test requirements. Several test reports confirmed that sampling was conducted under normal operating conditions, and none of the reports indicated conditions were not normal. The tests used a sampling time of 1 hour or more to ensure an adequate sample volume was collected. As explained earlier, in response to another comment, EPA believes that it is preferable to use actual performance test data to determine the MACT floor when there are adequate such data available to reasonably characterize the level of performance of the relevant sources. The commenters did not provide us with any additional facts or data to show that any of the data we relied upon are invalid. For the reasons described above, we believe that these data are adequate to reasonably estimate the performance of the best sources for purposes of establishing a MACT floor, and these estimates more accurately reflect the actual performance of the best-performing sources than would estimates based on State permit data. Moreover, the approach that we used to confirm and refine the emissions estimates for the top-performing sources assures that we have adequately accounted for variability over time, and, therefore, addresses the concerns of the commenter.

We re-evaluated the emissions test data for ancillary operations based on the statistical approach previously discussed, in order to confirm and

refine our earlier analysis. At proposal, we considered the combined data for hot metal transfer/desulfurization and ladle metallurgy. However, we believe it is necessary to separate the two operations because hot metal transfer/desulfurization is performed on molten iron before charging to the BOPF. Ladle metallurgy is performed on molten steel from the BOPF. Consequently, the two processes have different emission characteristics which suggests each should have a separate MACT floor determination.

We have test data from three source tests of desulfurization and hot metal transfer. The control device used in these source tests, and the only type of control used for these processes, is a baghouse. We reviewed the test data and the design features of these baghouses (such as air-to-cloth ratio), and we concluded that the baghouses that had been tested were among the best-performing units. The three tests ranged from 0.0016 to 0.012 gr/dscf. We calculated the 95th percentile for each plant. The median of the 95th percentiles for the top-performing plants is 0.006 gr/dscf. We rounded this value to two decimal places and chose 0.01 gr/dscf to represent the MACT floor for existing units.

The best-controlled source averaged 0.0016 gr/dscf with a 95th percentile of 0.003 gr/dscf, which we chose to represent the MACT floor for new sources.

We have test results for six source tests of typical ladle metallurgy operations. As with desulfurization, the control device used in these source tests, and the only type of control used for these processes, is a baghouse. We reviewed the test data and the design features of these baghouses (such as air-to-cloth ratio), and we concluded that the baghouses that had been tested were among the best-performing units. The five best-performing units ranged from 0.0021 to 0.0047 gr/dscf. We calculated the 95th percentile for each plant. The median of the 95th percentiles for the top-performing plants is 0.006 gr/dscf. We rounded this value to two decimal places and chose 0.01 gr/dscf to represent the MACT floor for existing units.

The best-controlled source with typical ladle metallurgy operations (lance injection, electromagnetic stirring, and alloy addition), averaged 0.0021 gr/dscf with a 95th percentile of 0.004 gr/dscf, which we chose to represent the MACT floor for ladle metallurgy for new sources.

6. Opacity Standard for Sinter Plant Discharge End

*Comment.* According to one commenter, EPA does not explain how the floor determination represents an accurate picture of the relevant best sources' actual performance, or how it knows that the best sources are not doing better than their permits require.

*Response.* We proposed an opacity limit of 20 percent for the sinter plant discharge end based on the five sources subject to the most stringent existing State regulations or permit limits. One plant has a 10 percent opacity limit, and four plants have a 20 percent opacity limit. We chose the median (20 percent) to represent the MACT floor.

A total of six of the seven operating plants use a capture and control system vented to a baghouse for the discharge end, and engineering knowledge of their design features and the nature of emissions indicate that these baghouses are the best demonstrated control technology for the discharge end. Following the end of the comment period, in order to confirm the appropriateness of the proposed opacity limit, we surveyed the industry to obtain additional opacity data for the discharge end. The only substantive data we obtained was from Ispat-Inland, which submitted the results of 1,745 hours of observations by EPA Method 9 (40 CFR part 60, appendix A) conducted over 4 years (1997 to 2000). Ispat-Inland is among the better-performing plants because it controls the discharge end, crusher, and hot screen by capturing emissions using local hooding and ventilation and venting them to a baghouse for collection. Consequently, we believe that the control system at Ispat-Inland is representative of the best-performing sources.

At Ispat-Inland, approximately one percent of the hourly opacity observations had a 6-minute average that exceeded 20 percent opacity, and the plant met the proposed limit 99 percent of the time. Although many of the observations were below 20 percent opacity, the limit accommodates the normal variability in the process operations and control equipment. The data clearly show that Ispat-Inland is not consistently performing substantially better than what their permit requires and that our proposed limit is a reasonable picture of what the best-controlled sources can achieve.

*Comment.* Seven commenters contend that EPA has not shown that existing State limits are consistently achievable under the worst foreseeable conditions over time. The commenters claimed that opacity data they submitted to EPA demonstrates that the limits are not consistently achievable by well-operated and maintained sinter plants. The EPA must reevaluate the achievability of the proposed opacity standard.

*Response.* None of the commenters provided evidence that facilities subject to the identified State limits have been unable to meet those limits (*e.g.*, in the form of reported violations). Moreover, as discussed in the previous response, approximately 99 percent of the hourly opacity observations at Ispat-Inland never had a 6-minute average in excess of 20 percent opacity. Performance improved to 99.9 percent compliance for more recent, 1998 to 2000, observations. As stated previously, these data show that the opacity limit based on existing State limits is achievable because it has been achieved on a continuing basis. Our analysis considered all of the data that we could obtain, and the only data available was that for Ispat-Inland which we discussed in detail.

7. Opacity Standard for Blast Furnace Casthouse

*Comment.* One commenter states that we failed to explain how the floor we selected reflects the best-performing 12 percent of the blast furnace casthouses. The commenter further states that we failed to pursue and collect from the affected sources or State and local agencies available opacity data, and we undermined the floor-setting process of the CAA.

*Response.* For blast furnace casthouses, we established the MACT floor as a 20 percent opacity limit based on the five sources subject to the most stringent existing State regulations or permit limits. Two casthouses are subject to a 15 percent opacity limit, and the next most stringent limit is 20 percent, which is applied to 22 of the 37 blast furnace casthouses.

Following the end of the comment period, in order to confirm the appropriateness of the proposed opacity limit, we obtained additional opacity data for operating blast furnace casthouses to supplement the limited data we had available at proposal. We now have opacity data for 25 of the 37 existing blast furnace casthouses, and the data range in coverage from a 1-hour test to several years of observations. (Although there were 39 blast furnace casthouses at proposal, two have subsequently shut down.) We closely examined the data that covered a reasonably long period of time (*e.g.*, at least 1 year to capture seasonal variations), which included 12 of the 25 casthouses for which we had data. We

believe it is important to account for seasonal variations and examine data covering 1 year or more to account for variability due to differences in ventilation rates, weather conditions, and changes in the process over time. We found that the casthouses with the lowest opacities were those with secondary capture and control systems. For some casthouses, most of the 6-minute averages were routinely below the proposed 20 percent limit with occasional readings that approached or exceeded 20 percent. The blast furnace casthouses at U.S. Steel (Gary) achieved the 20 percent opacity limit 99 to 100 percent of the time. One blast furnace casthouse had a maximum 6-minute average of 21 percent opacity, and another casthouse had a maximum of 20 percent opacity. At Ispat-Inland, the casthouses achieved 20 percent opacity 98 to 99.6 percent of the time. At LTV Steel, the casthouses achieved 20 percent opacity 99.5 to 99.8 percent of the time. These blast furnaces were achieving the 20 percent limit, but they were not demonstrably able to consistently achieve a level of performance more stringent than this limit. Consequently, the opacity data confirm that the 20 percent opacity limit based on the median value of the sources with the five most stringent emission limits is an accurate reflection of the MACT floor.

*Comment.* Eight commenters contend that the limits are not consistently achievable under the worst foreseeable conditions over time even by the casthouses used to establish the MACT floor. In support, the commenters claimed they had provided opacity data showing that the limits have not been consistently achieved by well-operated and maintained casthouses. Achievability of the opacity limit for blast furnace casthouses is of particular concern because the process is subject to infrequent but significant swings in emission rates. The commenters recommend that EPA collect and analyze all available opacity data from States, Regions, and industry and determine the standard based on achievability. They recommend using a statistically-derived limit based on a high confidence level (the 99.97th percentile) to avoid an unachievable standard that would result in many violations.

*Response.* Following proposal, in order to confirm the appropriateness of the proposed opacity limit, we collected additional opacity data and identified the best-performing sources in terms of low opacity. Our analysis considered all of the opacity data submitted by the commenters and data obtained from other sources. For the five best-performing blast furnace casthouses (*i.e.*, lowest opacities) with observations over at least 1 year, a 20 percent opacity limit was achieved for 99 to 99.8 percent of the time. We believe the data clearly show that an opacity limit of 20 percent represents what has been achieved by the best-performing sources and that it can be achieved on a continuing basis.

8. Opacity Standards for BOPF Shops

*Comment.* Eight commenters contend that the limits are not consistently achievable under the worst foreseeable conditions over time. They claim that opacity data submitted to EPA by the industry demonstrate that the limits are not consistently achieved by well-operated and maintained BOPF shops, and as a result, EPA must reevaluate the achievability of the proposed opacity standards.

*Response.* Following proposal, in order to confirm the appropriateness of the proposed 20 percent opacity limit, we obtained additional opacity data for operating BOPF shops to supplement the limited data we had available at proposal. We now have opacity data for 19 of the 23 existing BOPF shops ranging in coverage from a single 2-hour test to multiple tests covering several years of observations. Our analysis considered all of the opacity data submitted by the commenters and data obtained from other sources. We examined the data and found that the best-controlled BOPF shops were those with secondary capture and control systems. In contrast, several BOPF shops without secondary controls experienced frequent exceedances of the 20 percent opacity limit. A total of eight BOPF shops have capture systems for secondary emissions that are vented to baghouses. We re-evaluated the data to determine the appropriateness and achievability of the proposed 20 percent opacity limit. We focused on BOPF shops for which we had a reasonable amount of long-term data. Specifically, we examined opacity data only from shops for which we had 12 months or more of observations (*i.e.*, all seasons of the year), which included observations for 11 of the 23 existing shops. The five best-performing shops achieved the limit 99.5 to 99.98 percent of the time. These data clearly indicate that the best-performing units in the category achieve the proposed opacity limit (but do not achieve a more stringent level of control), and, therefore, that the State limits are a good proxy for actual best performance. Thus, we are confident that the proposed opacity limit of 20 percent is achievable and that it provides an accurate picture of the actual performance achieved by the best-performing sources.

Our analysis of the opacity data for BOPF shops indicated that opacity observations are routinely made over several consecutive steel production cycles. In the proposal, we had included a provision that the opacity observations during the performance test did not have to be consecutive. In today's final rule, we have removed the provision which allowed non-consecutive observations. This is consistent with the opacity data used to support the opacity limit and with the procedures routinely used to make opacity observations for BOPF.

9. Sinter Cooler Stack

*Comment.* Six commenters note that one of the plants used to calculate the MACT floor is permanently shut down. Consequently, the floor analysis does not reflect the SIP requirements for actual operating sources. In addition, EPA has not shown that the proposed standard is achievable by the best-performing sources under the foreseeable range of operating conditions.

*Response.* Our investigation into this comment indicates that all five of the sinter plants listed in Table B–11 of the BID are operating (Ispat-Inland at East Chicago, IN; WCI Steel at Youngstown, OH; Bethlehem Steel at Sparrows Point, MD; U.S. Steel at Gary, IN; and AK Steel at Middletown, OH). Because we had only limited test data, we based the MACT floor on the average of the top five sources subject to the most stringent existing State regulations or permit limits. One plant has a limit of 0.01 gr/dscf (for one-half of its cooler), three of the five best-performing plants are subject to a limit of 0.03 gr/dscf, and one plant has a lb/hr limit that is equivalent to about 0.05 gr/dscf. The average and median limit applied to the top five plants is 0.03 gr/dscf. Although our data are limited, they show that the proposed emission limit is achievable and has been achieved based on the available test results. Nationwide, baghouses are used at three plants, a cyclone at one plant, and three plants are uncontrolled. Consequently, the best-performing plants and the median of the top five would be a plant with a baghouse. A test at WCI Steel, which controls these emissions with a baghouse, ranged from 0.005 to 0.02 gr/dscf and averaged 0.009 gr/dscf. The results for WCI show significant variability in the run-to-run results, which range up to 0.02 gr/dscf. The test results indicate that the better-controlled plants can achieve the limit

of 0.03 gr/dscf; however, considering the high variability from run to run, the plant is not substantially overachieving the limit.

No commenters provided any evidence that the existing State limits were not being achieved on a continuing basis (*e.g.*, in the form of violation reports), and we have no evidence that any facility has been in violation of the existing State limits. Consequently, we believe the floor based on State limits represents a reasonably accurate picture of what the best-performing sources have and continue to achieve. For new sources, we chose a limit of 0.01 gr/dscf based on the most stringent State limit. The average test results for WCI Steel (0.009 gr/dscf) show that this limit is achievable by a properly-designed and operated baghouse.

10. PM Standard for Sinter Discharge End Control Device

*Comment.* According to one commenter, EPA claims it has PM test data from six plants, but asserts in the preamble that it has credible test data for only one plant and never explains why data for only one plant is credible. The EPA does not explain how this represents an accurate picture of the relevant best sources' actual performance, or how it knows that the best sources are not doing better than their permits require.

*Response.* The reference to test data in the BID is correct; however, use of the term ''test data'' in the BID was not correct. We had estimates of PM emissions from the discharge end from several plants based on emission factors that they supplied in a survey questionnaire. However, these estimates were not supported by the use of reference methods for sampling and analysis or substantiated by emission test reports. For units in this category, it is not feasible to use estimates based on typical emission factors to identify the level of control that a plant routinely achieves. Therefore, this information is of no practical value for purposes of identifying the best-performing sinter discharge ends. We found the only test data we could validate for the discharge end was for the EPA test conducted at WCI Steel. The results of this test support our conclusion that the existing State limits reasonably approximate actual emissions and performance. However, we have no indication or expectation that the best-performing plants are achieving a level of control more stringent than the proposed emission limit. Consequently, we based the floor on the most stringent State limits.

*Comment.* Seven commenters state that three of the nine sinter plants in the existing population are now shut down, including one of the five plants used to calculate the floor for the discharge end. The commenters assert that EPA must recalculate the floor to reflect only operating sources. Also, EPA must show that the standard is consistently achievable by the best-performing sources under the foreseeable range of operating conditions.

*Response.* We agree that one of the five best-performing plants (Wheeling-Pittsburgh Steel) used to determine the floor was shut down at the time of the floor analysis. We elected to re-calculate the floor and exclude this plant. We determined that the floor based on the average of the five best-performing sources remains the same (0.02 gr/dscf). One plant is subject to a limit of 0.01 gr/dscf, two plants are subject to a limit of 0.02 gr/dscf, one is subject to 0.03 gr/dscf, and the fifth plant has a mass rate limit that is equivalent to about 0.04 gr/dscf. The average and median value associated with the top five limits is 0.02 gr/dscf. We have detailed design information for the baghouses applied to the discharge end, and our engineering analysis of the design information, coupled with test data for baghouses in similar applications, indicates that these controls can achieve 0.02 gr/dscf under the foreseeable range of operating conditions. Although we have test data for only one baghouse, the test averaged 0.006 gr/dscf and further supports the achievability of the MACT floor. We based the MACT floor for new sources on the most stringent State limit of 0.01 gr/dscf. Again, the available test data indicate that this limit can be achieved by a properly-designed and operated baghouse.

11. PM Standard for BOPF Fugitive Emissions

*Comment.* One commenter stated that EPA does not explain how the floor determination represents an accurate picture of the relevant best sources' actual performance, or how it knows that the best sources are not doing better than their permits require.

*Response.* We have test data for only one baghouse applied to BOPF fugitive emissions, and because of the nature of the test, the results are not useful for determining the MACT floor. During the test, sampling was performed continuously over a 3-hour period, even when the furnace was not operating and when fugitive emissions were not occurring. Consequently, the reported concentrations for the baghouse outlet are unrepresentative of the concentrations that would be measured when fugitive emissions from charging and tapping are occurring. Because of the lack of data, we based the floor on existing State limits and have made no changes to the proposed emission limits. We chose 0.01 gr/dscf as the floor from the median of the five sources with the most stringent limits (one at 0.0052, one at 0.006, two at 0.01, and one at 0.012 gr/dscf). One unit is subject to the most stringent State limit of 0.0052 gr/dscf, and we selected this limit as the MACT floor for new sources. These limits are achieved by using a capture system vented to a baghouse, and these levels are consistent with the performance of well-designed and operated baghouses. We have no evidence that plants are violating their current limits, and we have no indication they are achieving a level of control more stringent than the identified State limits. This observation is consistent with an EPA design manual for baghouses which states that typical outlet concentrations for all applications range from 0.001 to 0.01 gr/dscf (depending primarily on the design parameters).

*B. What Surrogates Did We Use for HAP?*

1. PM for Metal HAP

*Comment.* One commenter contends that PM is not a valid surrogate for HAP metal compounds and that specific limits for individual metals should be established. In support, the commenter points to other rules where EPA has recognized that PM is not a valid surrogate for mercury, lead, and cadmium because of their volatility and that these emissions cannot necessarily be controlled merely by controlling PM emissions. Consequently, EPA cannot claim PM is a valid surrogate for metal HAP in the final rule or that setting standards for individual metals would ''. . . achieve little, if any, HAP emission reduction beyond what would be achieved using the surrogate pollutant approach based on total PM.'' Because EPA has already recognized that PM is not an adequate surrogate for mercury, lead, and cadmium, EPA must set individual emission standards for such HAP.

*Response.* We disagree with the commenter and believe that PM is a valid surrogate for the HAP metal compounds emitted from integrated iron and steel sources. The rationale in the preamble for the hazardous waste combustors (HWC) rule is unique to that source category and does not apply to the metal HAP emissions and controls in the integrated iron and steel industry.

The preamble for the final HWC rule makes this point clearly:

> . . . However, for sources not burning hazardous waste and without a significant potential for extreme variability in metals feed rates, PM is an adequate surrogate for metal HAP (*e.g.*, for nonhazardous waste burning cement kilns).[1]

Hazardous waste combustors are unique and different from integrated iron and steel sources in several respects:

- They have significant levels of volatile and semi-volatile HAP metal compounds in the waste-derived fuels being burned,
- The feed rate of these metals can be highly variable, and
- The high temperatures in the combustion process can volatilize semi-volatile metals and form fine PM, which can be harder to control. In contrast, the raw materials used in iron and steel processes have relatively low levels of metal HAP, the level of metal HAP does not vary significantly as do the HAP metals in waste materials fed to HWC, and test data indicate that PM control devices effectively control the HAP metals from iron and steel processes.

A key parameter for the control of both semi-volatile and non-volatile metal compounds is the operating temperature of the air pollution control device that is applied. At temperatures of 200 to 400°F, the range typical of control devices applied to emissions from integrated iron and steel processes, any semi-volatile and non-volatile HAP metal compounds present would exist in the form of fine PM, and, therefore, will be controlled in direct relationship to PM.

Mercury is an exception because of its high volatility. However, we have no data that show any significant emissions of mercury from integrated iron and steel plants, and there is no reason to suspect its presence in any appreciable quantities in emissions from ironmaking and steelmaking. In the two sinter plant tests we conducted, we sampled and analyzed for mercury. The results showed only trace levels of mercury ($7 \times 10^{-7}$ to $2 \times 10^{-6}$ gr/dscf). Thus, we believe that mercury emissions from integrated iron and steel sources are negligible and that the performance of these units with respect to any trace levels of mercury can not be measurably improved. Moreover, no iron and steel plants operate an emissions control system that would further reduce these trace amounts of mercury emissions, or otherwise take any steps that would reduce such emissions. Because no units currently reduce mercury emissions from the integrated iron and steel industry, the MACT floor for mercury (for both new and existing sources) would be no reduction in emissions. Because the mercury concentrations are already so low, no technically feasible control technologies can be identified that could reduce these trace levels of mercury emissions. Therefore, no mercury emissions standards are proposed for integrated iron and steel sources.

2. Oil Content for Organic HAP

*Comment.* Two commenters urged us to establish emission standards for specific organic HAP, including dioxin, in lieu of the oil content limit. One commenter contends that the proposed rule should contain emission limits for the many organic HAP emitted from iron and steel plants, including dioxin, polycyclic organic matter, benzene, and toluene. The proposed operating requirement for sinter plants is not an emission standard and does not satisfy CAA requirements. Furthermore, regulations pursuant to section 112 of the CAA must include emission standards for each HAP emitted from an affected source category. The commenter adds that EPA provided no data in support of the proposed approach for controlling dioxin emissions. This commenter believes the proposed rule effectively ignores organic HAP in contradiction of CAA requirements because vapor phase organics are not removed by the fabric filters or wet scrubbers.

Several commenters contend that EPA has not met its requirements to show a correlation between the surrogate to be controlled and the object of control. Two commenters state that EPA has not provided sufficient data to demonstrate a correlation. Eight other commenters do not believe that there is a correlation to dioxin emissions or that control of the oil and grease would reduce HAP organic emissions. In support, they claim data from one plant (Bethlehem Steel, Sparrows Point) show no VOC increase in windbox emissions as oil content increases.

*Response.* The only available data regarding organic HAP emissions from these units are from two tests we conducted. These tests are insufficient to generate a meaningful characterization of emission control levels that can be achieved under varying process conditions over time, and there is no way to use this emissions test data to identify the best-performing plants. Moreover, the add-on emission controls used by units in the category (baghouses and venturi scrubbers) do not control vapor phase organic compounds. As a result, we believe that the best way to assess current levels of VOC emission control, and to limit such emissions is to rely upon existing methods of pollution prevention. Accordingly, we have established limits on the amount of organic HAP precursor material (specifically oil and grease) that may be in the sinter feed, in order to control emissions of organic compounds. Additionally, section 112(d)(2) of the CAA specifically allows EPA to establish MACT standards based on emission controls that rely on pollution prevention techniques.

We have added information to the docket from a European study that shows dioxin emissions are related to oil content-emissions increase as the oil content increases. We have also added information from two U.S. sinter plants that show VOC emissions increase as oil content increases, and the VOC contains volatile HAP such as benzene. In fact, plants in Indiana control VOC emissions by limiting the amount of oil in the sinter feed. Because the two are related, Indiana allows monitoring oil content as an alternative to VOC monitoring. In the past, sinter plants with baghouses have voluntarily limited oil content because the organic compounds that were emitted tend to condense and blind the bags as well as pose a fire hazard. We believe these studies conclusively show that oil content correlates with organic emissions.

An emission limit for individual organic compounds is not practical because the emission controls that are used do not effectively control all organic HAP. Conventional control systems used for organics, such as incineration or carbon adsorption, would not be practicable because they are ineffective at the very low concentration (parts per million levels) in the windbox exhaust stream. On the other hand, a limit on oil content effectively limits emissions of organic HAP, and control of oil content is a proven emission control measure. Consequently, in this instance, we believe that a limit on oil content is the only feasible way to ensure that all plants achieve the MACT level of control for organic HAP from the sinter plant windbox exhaust.

*C. Is a Risk Analysis Warranted?*

*Comment.* Seven commenters urge EPA to perform a risk assessment under section 112(d)(4) of the CAA for manganese to determine if HAP controls are necessary. Manganese is a health threshold pollutant, and there is little likelihood of chronic or widespread

[1] See Footnote 40 in preamble to the final HWC rule (64 FR 52846, September 30, 1999).

exposure at concentrations above the threshold at iron and steel plants. The EPA conducted this analysis for the pulp and paper standards and decided not to regulate hydrogen chloride emissions. According to the commenters, risk-based standards under section 112(d)(4) would result in no standards, or less stringent and more cost effective standards.

*Response.* Section 112(d)(4) of the CAA provides EPA with authority, at its discretion, to develop risk-based standards for HAP ''. . . for which a health threshold has been established,'' provided that the standard achieves an ''ample margin of safety.'' Section 112(d)(4) says:

> [w]ith respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

As EPA has indicated in the past (*see* 63 FR 18754 and 67 FR 44713), we generally apply section 112(d)(4) of the CAA only to HAP that are not carcinogens because Congress clearly expected that carcinogens would be non-threshold pollutants. The legislative history further indicates that if EPA invokes this provision, it must assure that any emission standard results in ambient concentrations less than the health threshold, with an ample margin of safety, and that the standards must also be sufficient to protect against adverse environmental effects. (*See* S. Rep. No. 228, 101st Cong. at 171.) The EPA is not to consider cost in establishing a standard pursuant to section 112(d)(4).

Therefore, EPA believes it has the discretion under section 112(d)(4) of the CAA to develop risk-based standards for some categories emitting threshold pollutants, which may be less stringent than the corresponding floor-based MACT standard would be. Where EPA develops standards under this provision, we seek to ensure that emissions from every source in the category or subcategory are less than the threshold level to an individual exposed at the upper end of the exposure distribution. We believe that assuring protection to persons at the upper end of the exposure distribution is consistent with the ample margin of safety requirement in section 112(d)(4). (*See* 63 FR 18754 at 18768.)

However, the EPA emphasizes that use of section 112(d)(4) of the CAA authority is wholly discretionary. As the legislative history described above indicates, cases may arise in which other considerations dictate that the Agency should not invoke this authority to establish less stringent standards, despite the existence of a health effects threshold that is not jeopardized. For instance, EPA does not anticipate that it would set less stringent standards where evidence indicates a threat of significant or widespread environmental effects, although it may be shown that emissions from a particular source category do not approach or exceed a level requisite to protect public health with an ample margin of safety. The EPA may also elect not to set less stringent standards where the estimated health threshold for a contaminant is subject to large uncertainty. Thus, in considering appropriate uses of its discretionary authority under section 112(d)(4), EPA considers other factors in addition to health thresholds, including uncertainty and potential adverse environmental effects, as that phrase is defined in section 112(a)(7) of the CAA.

For several reasons, in this case, we have decided not to exercise our discretion to consider existing threshold levels for manganese in setting the emission standards for metal HAP compounds from integrated iron and steel facilities. This decision is appropriate because we have insufficient data about the nature and degree of public exposures to these emissions, including background exposure levels and other relevant factors, to meaningfully consider whether maximum exposures to manganese emissions from integrated iron and steel facilities would remain below the relevant threshold. In fact, it is clear that facilities in this source category emit significant quantities of manganese, totaling about 250 tpy. Because the commenters did not provide us with any of the detailed site-specific information that we would need to perform an adequate assessment of emissions and exposures, we have concluded that it would be inappropriate to consider the threshold nature of manganese in establishing MACT standards for the integrated iron and steel source category. Additionally, the commenters have supplied no information about the environmental impact of metal emissions from integrated iron and steel plants, and we have no data upon which we can rely for such an environmental assessment.

Moreover, even if we had access to more detailed data regarding emissions, exposures, and environmental impact, it is not clear whether consideration of the manganese health threshold would have any practical effect on the MACT standards established in today's final rule. In particular, emissions from integrated iron and steel plants include metal HAP besides manganese that are not threshold pollutants (including lead, nickel, and chromium compounds), and these pollutants are controlled using the same control technologies that reduce emissions of manganese. As with manganese, we have no data regarding maximum exposures or environmental impacts from such emissions at integrated iron and steel facilities, and we have no data specifically characterizing these metal emissions. These plants emit about 360 tpy of HAP metal compounds—including about 111 tpy of lead, nickel and chromium compounds. Certain lead, nickel and chromium compounds are listed as carcinogens and have no applicable human health threshold. For additional information, see our guidance document entitled ''Guidance on the Major Source Determination for Certain Hazardous Air Pollutants'' available on our Web site at *http://www.epa.gov//ttn/oarpg/t3/memoranda/agghapmem.pdf*.

Today's final rule controls all metal HAP emissions (including lead, nickel, and chromium) by using PM as a surrogate. Because we use PM as a surrogate, eliminating only one or some of the metal HAP from consideration would have little if any practical impact on the MACT standards. Consequently, we believe the MACT standards finalized today are appropriate and will reduce emissions of all HAP at integrated iron and steel plants to the levels currently being achieved by the best-performing facilities.

### *D. How Did We Revise the Emission Limitations?*

#### 1. Sinter Cooler Emissions

*Comment.* Seven commenters explain that some exhaust systems on the sinter plant discharge end are designed to capture emissions at the point where sinter is loaded onto the sinter cooler and portions of the sinter cooler itself. In situations where cooler emissions are exhausted in part or in whole to the discharge end control system, the commenters request that the cooler stack emissions standard of 0.03 gr/dscf (for existing facilities) apply to the discharge end baghouse.

*Response.* We disagree and have written the final rule to clarify that the limit of 0.02 gr/dscf for the discharge end applies even when other emissions are ducted to the control device. The most effective technology for controlling emissions from the discharge end is a baghouse, and a properly-designed and operated baghouse can achieve 0.02 gr/dscf on a continuing basis. An emission limit of 0.03 gr/dscf is too high to be representative of the MACT floor, and

does not reflect what is currently achieved by the five best-performing sources.

*2. Sinter Plant Oil Content Requirement*

*Comment.* Sinter plants in Maryland and Indiana already must comply with rules that regulate the oil and grease content for the sinter plant raw material blend. The rules limit VOC emissions to no more than 0.25 lb/ton of sinter (except Indiana allows 0.36 lb/ton during non-ozone season). Maryland requires VOC testing and Indiana provides the option of VOC testing or sampling for oil content. Seven commenters recommend VOC testing as an option in the final rule because most plants in these states already use them; some comments also suggest a 30-day rolling average for VOC.

*Response.* We reviewed data submitted by two plants that showed VOC emissions correlated with oil content. LTV Steel (now owned by International Steel Group) performed simultaneous testing of oil content and VOC emissions, correlated the results, and showed that an oil content of 0.024 percent was equivalent to the State VOC limit of 0.25 lb/ton of sinter. As a result, the State allowed them to use alternative monitoring procedures. Based on our review of the data, we believe that maintaining the VOC at a level of 0.2 lb/ton or lower will ensure that the operating limit of 0.02 percent oil is maintained. Consequently, we have written the final rule to include an alternative emission limitation for VOC of 0.2 lb/ton of sinter. A plant electing the alternative limit is required to measure VOC emissions (total gaseous nonmethane organics as carbon) in source emissions using EPA Method 25 in 40 CFR part 60, appendix A (or a previously approved method). As with the oil content, the VOC limit is based on a 30-day rolling average. The 30-day average provides additional flexibility because it allows an occasional high daily value to be averaged with lower values on other days to achieve compliance. We believe the 30-day average accounts for day-to-day variability and enhances the achievability of the limit.

3. ESP Operating Limit

*Comment.* For plants required to use COMS to monitor ESP, the proposed rule establishes an enforceable operating limit based on the opacity observed during the initial performance test. Eight commenters argue that COMS data should not be used for compliance determinations because of measurement uncertainties and unreliability. They point to the recognized limitation for measuring opacity below 10 percent and provide supporting data comparing COMS measurements in ESP stacks to EPA Method 9 data. Like the steel pickling MACT standard, COMS data should be used only to indicate if the ESP is operating properly and to institute corrective action as appropriate; subsequent EPA Method 9 observations may be appropriate in the event of a high number of measured excursions. These commenters also object to the operating limit for ESP equipped with COMS because EPA has not demonstrated a correlation between opacity and PM emissions from BOPF controlled by ESP to support using opacity as a surrogate for PM. A COMS opacity reading that is above that observed during a performance test does not necessarily indicate an exceedance because the high reading could have been caused by water vapor or another interference. The commenters believe EPA has not demonstrated that the tiny amount of data collected during the initial performance test would be representative of the opacity performance of ESP over the full range of foreseeable operating conditions. Thirty 6-minute averages taken over a 3-hour period will not adequately characterize the range of 87,600 6-minute averages generated over an entire year. Thus, EPA has not demonstrated that a limit set in this manner would be consistently achievable by well-operated and maintained equipment under the most adverse operating conditions over time.

*Response.* We believe that opacity is well established as a surrogate for PM. However, we understand the concerns of the commenters with respect to variability and have written the procedures in the final rule for determining the COMS operating limit to account for variability. The opacity operating limit is based on measurement of 6-minute averages during the performance test, and then calculating the 99 percent upper confidence limit on the mean of a normal distribution of the average opacity values. This statistical approach will account for normal variability and still provide assurance that the ESP is operating properly.

4. Operating Limits for Capture Systems

*Comment.* Nine commenters believe that an enforceable range of operating limits applicable under all operating conditions cannot be determined from the initial performance test for damper systems. Fixed damper positions for one set of operating conditions are not appropriate due to varying simultaneous operations, normal process variations, and seasonable variations. The final rule should allow sources to specify multiple operating scenarios or ranges of operation in the operation and maintenance plan and require plants to meet the values in the plan rather than those set in the initial performance test. Eight of these commenters also recommend that the final rule include an alternative allowing continuous monitoring of fan amperage, like the provisions included in the proposed standards for coke plants.

*Response.* We investigated this issue further, and based on the additional information we received, we agree that fixed damper settings are not practicable or desirable in many cases. For example, damper settings may need to be changed in the BOPF shop depending on the operations underway at the time, such as hot metal transfer, desulfurization, charging, oxygen blowing, and tapping. We have written the final rule to provide flexibility and have modeled it after the MACT standard for primary copper smelters. The owner or operator must specify in the operation and maintenance plan the damper settings that will be used under different operating scenarios and for seasonal variations. These damper settings must be checked once per day. We have also added fan amperage as an acceptable alternative, consistent with the MACT standards for coke ovens and for primary copper smelters.

*E. How Did We Revise the Performance Test Requirements?*

1. Overlapping Cycles

*Comment.* Some plants have the capability of overlapping cycles of two separate furnaces (*e.g.*, they may blow one furnace while another is being tapped). It appears that EPA's database is comprised of tests conducted on single furnaces. For this reason, seven commenters ask EPA to clarify that testing of primary emissions from BOPF is to be conducted during the steel production cycle of a single furnace. Other shop operations may be suspended during the testing. This approach is consistent with the manner in which the data were collected.

*Response.* We specify in the final rule exactly when owners or operators must test primary emissions from BOPF. For closed hood BOPF, plants must sample only during the primary oxygen blow. For open hood BOPF, plants must sample during the steel production cycle. We clarified that the steel production cycle begins when scrap is charged to the furnace and ends 3 minutes after the slag is emptied from the vessel. These requirements are

consistent with the way the emission test data were collected. We do not agree that testing should be performed under conditions that do not represent normal operations, such as suspending certain shop operations. The provisions in 40 CFR 63.7(e) apply and require that sampling be conducted under conditions that are based on representative performance (*i.e.*, performance based on normal operating conditions of the affected source).

2. Testing Multiple Stacks

*Comment.* Eight commenters believe it is impractical and burdensome to require simultaneous tests of multiple stacks or vents for a control device (*e.g.*, baghouse with eight modules, each with its own fan and stack). Successive testing of each stack or vent could be more manageable, but still has excessive costs. One commenter estimates 42 days of testing could be needed at one plant if each stack and vent must be tested. For these reasons, the proposed rule should be revised to allow for performance tests of a representative exhaust flow where control devices with multiple stacks are used.

*Response.* We agree and believe that because of the site-specific nature of this problem, decisions should be made on a case-by-case basis by the applicable permitting authority. We have written the final rule such that a source may conduct a representative sampling of stacks subject to the approval of the permitting authority when there are more than three stacks associated with a process.

*F. How Did We Revise the Cost Estimates and Economic Impact Analysis?*

*Comment.* Several commenters stated that we significantly underestimated the cost of the proposed rule. At proposal, we estimated a capital cost of $34 million. The commenters said that the total capital cost was in the range of $270 to $320 million. Their estimate includes the cost of controls for plants not included in EPA's estimate as well as higher estimates of the cost for controls and monitoring in general.

*Response.* Following proposal and the receipt of comments, we contacted facilities to discuss the details of their cost estimates. Some facilities provided the details and basis of their estimates, and we incorporated them into our revised estimates. Other plants did not provide details or documentation; consequently, we developed our best estimate of potential costs for these facilities. In addition, we collected opacity data for most of the operating plants. We used these data to identify plants that may need to install capture and control systems in the blast furnace casthouse or BOPF shop to meet the 20 percent opacity limit. Our revised capital cost estimate increased to $93 million.

*Comment:* Eight commenters urge EPA to update it's economic impact analysis to represent current economic conditions of the steel industry and the cumulative effect of all other pending environmental regulatory requirements facing the industry during the same time period.

*Response:* We agree with the commenters and have performed a revised economic impact analysis. The revised analysis attempts to account for the factors mentioned in the comment. At proposal, we estimated domestic production from integrated steel mills would decline by 3,100 tons, and operating profits were expected to decrease by $5.2 million annually. With our revised analysis, we estimate domestic production from integrated mills will decline by 73,000 tons, and operating profits will decrease by $13 million per year. A complete copy of the economic impact analysis is available in the docket.

## IV. Summary of Environmental, Energy, and Economic Impacts

*A. What Are the Air Emission Impacts?*

The installation of new controls and upgrades will result in reductions in emissions of metal HAP and PM. We estimate that five new capture and control systems for the blast furnace casthouses will reduce these emissions by 90 percent, a reduction of 14 tpy of HAP and 2,100 tpy of PM. The new BOPF scrubbers at one plant and upgrades at two others will result in a 50 percent reduction in emissions, 5 tpy of HAP and 350 tpy of PM. Six new capture and control systems for fugitive emissions from BOPF shops will result in a 90 percent reduction in emissions, 48 tpy of HAP and 3,300 tpy of PM.

Most plants currently operate air pollution control equipment sufficient to meet the final rule requirements. We expect the standard to reduce metal HAP emissions from plants that will need to install or upgrade controls by 67 tpy and PM emissions by 5,800 tpy. Nationwide emissions of metal HAP and PM from integrated iron and steel plants will be reduced by nearly 20 percent from current levels.

*B. What Are the Cost Impacts?*

The nationwide capital and annual costs of new and upgraded capture and control systems are estimated at $93 million and $15 million/yr, respectively. The total nationwide annual costs (including monitoring and recordkeeping) are about $16 million/yr. These costs are based on a new primary control system (high-pressure drop venturi scrubbers) for one BOPF shop, upgraded primary controls at two others, six new capture and control systems for fugitive BOPF emissions, and five new capture and control systems for blast furnace casthouses. In addition, the estimate includes a capital cost of $0.9 million and a total annual cost of $1 million for monitoring, reporting, and recordkeeping.

*C. What Are the Economic Impacts?*

We conducted a detailed economic impact analysis to determine the impacts of the final rule on both the industry and the U.S. market for steel mill products. We estimate the economic impacts in both areas to be negligible. We project the price of steel mill products, in aggregate, to increase by less than 0.1 percent with domestic production from integrated mills declining by 73,100 short tons. This decline in production at affected integrated mills is somewhat offset by increases at nonintegrated domestic steel producers (15,800 short tons) and foreign imports (49,500 short tons). In terms of industry impacts, the integrated steel producers are projected to experience a slight decrease in operating profits of $13 million annually, which reflects increased costs of compliance and associated reductions in revenues from producing final steel mill products. In addition, we don't foresee any individual integrated facility being in jeopardy of closure as a result of implementing the rule.

Based on the market analysis, the annual costs to society of today's final rule are projected to be $15.4 million. As a result of slightly higher prices for steel mill products, the final consumers of these products will incur an additional $6.2 million annually. Profits at integrated steel mills are expected to decline by $13 million annually because of directly incurred control costs and reduced product revenues, while nonintegrated steel mills that compete in these markets and are unaffected by today's rule will experience an increase in profits of $2.2 million. Similarly, foreign steel producers will also experience an increase in profits of $1.7 million due to the slightly higher prices and increases in imports to the U.S. market. For more information, consult the economic impact analysis supporting the proposed rule.

*D. What Are the Non-Air Health, Environmental, and Energy Impacts?*

Implementation of the rule will result in a small increase in solid waste-3,200 tpy of sludge and 5,500 tpy of dust. The energy increase is estimated at 24,000 megawatt-hours per year, primarily due to the energy requirements of new venturi scrubbers.

**V. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

*B. Paperwork Reduction Act*

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 2003.02), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy also may be downloaded off the Internet at *http://www.epa.gov/icr.* The information requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The final rule requires applicable one-time notifications required by the General Provisions for each affected source. As required by the NESHAP General Provisions, all plants must prepare and operate by a startup, shutdown, and malfunction plan. Plants also are required to prepare an operation and maintenance plan for capture systems and control devices subject to operating limits. Records are required to demonstrate continuous compliance with the monitoring, operation, and maintenance requirements for capture systems, control devices, and monitoring systems. Semiannual compliance reports also are required. These reports must describe any deviation from the standards, any period a continuous monitoring system was out-of-control, or any startup, shutdown, or malfunction event where actions taken to respond were inconsistent with startup, shutdown, and malfunction plan. If no deviation or other event occurred, only a summary report is required. Consistent with the General Provisions, if actions taken in response to a startup, shutdown, or malfunction event are not consistent with the plan, an immediate report must be submitted within 2 days of the event with a letter report 7 days later.

The annual public reporting and recordkeeping burden for this collection of information averaged over the first 3 years after May 20, 2003 is estimated to total 4,772 labor hours per year at a total annual cost of $347,115, including labor, capital, and operation and maintenance. Total capital costs associated with the monitoring equipment is estimated at $885,000. The total annualized cost of the monitoring equipment is estimated at $126,000. This estimate includes the capital, operating, and maintenance costs associated with the installation and operation of the monitoring equipment.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

*C. Regulatory Flexibility Act*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business according to the U.S. Small Business Administration (SBA) size standards for NAICS code 33111 (Iron and Steel Mills) of 1,000 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Based on the SBA size category for this source category, no small businesses are subject to the final rule and its requirements.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may

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. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandate (under the regulatory provisions of the UMRA) for State, local, or tribal governments. The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector of $100 million or more in any one year. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of the UMRA.

*E. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

The final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own facilities subject to the NESHAP. Thus, Executive Order 13175 does not apply to the final rule.

*G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on control technology and not on health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

The final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. Therefore, the EPA conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards as alternatives to EPA Methods 2F, 2G, 5D, 9 and OSW 846 Method 9071B, and none were brought to our attention in comments.

The Agency identified ASTM D4536–96, ''Test Method for High Volume Sampling for Solid Particulate Matter and Determination of Particle Emissions,'' as being potentially applicable and proposed it as an alternative to Method 5 or 17 for testing positive pressure fabric filters. However, this standard has been replaced by ASTM D6331–98, ''Standard Test Method for Determination of Mass Concentration of Particulate Matter from Stationary Sources at Low Concentrations (Manual Gravimetric Method).'' We have decided not to use ASTM D6331 in the final rule. The use of this voluntary consensus standard would be impractical or inconsistent with applicable law because it is not similar enough to replace ASTM D4536–96.

The search for emissions measurement procedures identified 16 other voluntary consensus standards. The EPA has not adopted these standards as alternatives in the final rule because they are impractical or still under development. Our search and review results are available in the docket.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement 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. The EPA will submit a report containing the final 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 final rule in the **Federal Register**. The final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

**Christine Todd Whitman,**

*Administrator.*

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

## PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

## Subpart A—[Amended]

■ 2. Section 63.14 is amended by adding a new paragraph (k) to read as follows:

### § 63.14 Incorporation by reference.

* * * * *

(k) The following material may be obtained from U.S. EPA, Office of Solid Waste (5305W), 1200 Pennsylvania Avenue, NW., Washington, DC 20460:

(1) Method 9071B, ''n-Hexane Extractable Material(HEM) for Sludge, Sediment, and Solid Samples,'' (Revision 2, April 1998) as published in EPA Publication SW–846: ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' The incorporation by reference of Method 9071B is approved for Section 63.7824(e) of Subpart FFFFF of this part.

■ 3. Part 63 is amended by adding subpart FFFFF to read as follows:

## Subpart FFFFF—National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

Sec.

**What This Subpart Covers**

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63.7781 Am I subject to this subpart?
63.7782 What parts of my plant does this subpart cover?
63.7783 When do I have to comply with this subpart?

**Emission Limitations**

63.7790 What emission limitations must I meet?

**Operation and Maintenance Requirements**

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63.7810 What are my general requirements for complying with this subpart?

**Initial Compliance Requirements**

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63.7822 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?
63.7823 What test methods and other procedures must I use to demonstrate initial compliance with the opacity limits?
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**Continuous Compliance Requirements**

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63.7831 What are the installation, operation, and maintenance requirements for my monitors?
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**Notifications, Reports, and Records**

63.7840 What notifications must I submit and when?
63.7841 What reports must I submit and when?
63.7842 What records must I keep?
63.7843 In what form and how long must I keep my records?

**Other Requirements and Information**

63.7850 What parts of the General Provisions apply to me?
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**Tables to Subpart FFFFF of Part 63**

Table 1 to Subpart FFFFF of Part 63—Emission and Opacity Limits
Table 2 to Subpart FFFFF of Part 63—Initial Compliance with Emission and Opacity Limits
Table 3 to Subpart FFFFF of Part 63—Continuous Compliance with Emission and Opacity Limits
Table 4 to Subpart FFFFF of Part 63—Applicability of General Provisions to Subpart FFFFF

## Subpart FFFFF—National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities

### What This Subpart Covers

#### § 63.7780 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for integrated iron and steel manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations and operation and maintenance requirements in this subpart.

#### § 63.7781 Am I subject to this subpart?

You are subject to this subpart if you own or operate an integrated iron and steel manufacturing facility that is (or is part of) a major source of hazardous air pollutants (HAP) emissions. Your integrated iron and steel manufacturing facility is a major source of HAP if it emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

#### § 63.7782 What parts of my plant does this subpart cover?

(a) This subpart applies to each new and existing affected source at your integrated iron and steel manufacturing facility.

(b) The affected sources are each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop at your integrated iron and steel manufacturing facility.

(c) This subpart covers emissions from the sinter plant windbox exhaust, discharge end, and sinter cooler; the blast furnace casthouse; and the BOPF shop including each individual BOPF and shop ancillary operations (hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy).

(d) A sinter plant, blast furnace, or BOPF shop at your integrated iron and steel manufacturing facility is existing if you commenced construction or reconstruction of the affected source before July 13, 2001.

(e) A sinter plant, blast furnace, or BOPF shop at your integrated iron and steel manufacturing facility is new if you commence construction or reconstruction of the affected source on or after July 13, 2001. An affected source is reconstructed if it meets the definition of reconstruction in § 63.2.

### § 63.7783 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you no later than May 22, 2006.

(b) If you have a new affected source and its initial startup date is on or before May 20, 2003, then you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you by May 20, 2003.

(c) If you have a new affected source and its initial startup date is after May 20, 2003, you must comply with each emission limitation and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) If your integrated iron and steel manufacturing facility is not a major source and becomes a major source of HAP, the following compliance dates apply to you.

(1) Any portion of the existing integrated iron and steel manufacturing facility that becomes a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the integrated iron and steel manufacturing facility must be in compliance with this subpart no later than 2 years after it becomes a major source.

(e) You must meet the notification and schedule requirements in § 63.7840. Several of these notifications must be submitted before the compliance date for your affected source.

## Emission Limitations

### § 63.7790 What emission limitations must I meet?

(a) You must meet each emission limit and opacity limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit for capture systems and control devices in paragraphs (b)(1) through (3) of this section that applies to you.

(1) You must operate each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse or to secondary emissions from a BOPF at or above the lowest value or settings established for the operating limits in your operation and maintenance plan;

(2) For each venturi scrubber applied to meet any particulate emission limit in Table 1 to this subpart, you must maintain the hourly average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial performance test.

(3) For each electrostatic precipitator applied to emissions from a BOPF, you must maintain the average opacity of emissions for each 6-minute period at or below the site-specific opacity value corresponding to the 99 percent upper confidence limit on the mean of a normal distribution of average opacity values established during the initial performance test.

(c) An owner or operator who uses an air pollution control device other than a baghouse, venturi scrubber, or electrostatic precipitator must submit a description of the device; test results collected in accordance with § 63.7822 verifying the performance of the device for reducing emissions of particulate matter to the atmosphere to the levels required by this subpart; a copy of the operation and maintenance plan required in § 63.7800(b); and appropriate operating parameters that will be monitored to maintain continuous compliance with the applicable emission limitation(s). The monitoring plan identifying the operating parameters to be monitored is subject to approval by the Administrator.

(d) For each sinter plant, you must either:

(1) Maintain the 30-day rolling average oil content of the feedstock at or below 0.02 percent; or

(2) Maintain the 30-day rolling average of volatile organic compound emissions from the windbox exhaust stream at or below 0.2 lb/ton of sinter.

## Operation and Maintenance Requirements

### § 63.7800 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for each capture system or control device subject to an operating limit in § 63.7790(b). Each plan must address the elements in paragraphs (b)(1) through (5) of this section.

(1) Monthly inspections of the equipment that is important to the performance of the total capture system (*e.g.*, pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (*e.g.*, presence of holes in ductwork or hoods, flow constrictions caused by dents or accumulated dust in the ductwork, and fan erosion). The operation and maintenance plan also must include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection.

(2) Preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(3) Operating limits for each capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse, or to secondary emissions from a BOPF. You must establish the operating limits according to the requirements in paragraphs (b)(3)(i) through (iii) of this section.

(i) Select operating limit parameters appropriate for the capture system design that are representative and reliable indicators of the performance of the capture system. At a minimum, you must use appropriate operating limit parameters that indicate the level of the ventilation draft and the damper position settings for the capture system when operating to collect emissions, including revised settings for seasonal variations. Appropriate operating limit parameters for ventilation draft include, but are not limited to, volumetric flow rate through each separately ducted hood, total volumetric flow rate at the inlet to the control device to which the capture system is vented, fan motor amperage, or static pressure.

(ii) For each operating limit parameter selected in paragraph (b)(3)(i) of this section, designate the value or setting for the parameter at which the capture system operates during the process operation. If your operation allows for more than one process to be operating simultaneously, designate the value or setting for the parameter at which the capture system operates during each possible configuration that you may operate.

(iii) Include documentation in your plan to support your selection of the operating limits established for the capture system. This documentation must include a description of the capture system design, a description of the capture system operating during production, a description of each selected operating limit parameter, a rationale for why you chose the parameter, a description of the method used to monitor the parameter according to the requirements of § 63.7830(a), and the data used to set the value or setting for the parameter for each of your process configurations.

(4) Corrective action procedures for bag leak detection systems. In the event a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Corrective actions may include, but are not limited to:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repair the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions; and

(5) Procedures for determining and recording the daily sinter plant production rate in tons per hour.

## General Compliance Requirements

### § 63.7810 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) During the period between the compliance date specified for your affected source in § 63.7783 and the date upon which continuous monitoring systems have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

## Initial Compliance Requirements

### § 63.7820 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) You must conduct a performance test to demonstrate initial compliance with each emission and opacity limit in Table 1 to this subpart that applies to you. You must also conduct a performance test to demonstrate initial compliance with the 30-day rolling average operating limit for the oil content of the sinter plant feedstock in § 63.7790(d)(1) or alternative limit for volatile organic compound emissions from the sinter plant windbox exhaust stream in § 63.7790(d)(2). You must conduct the performance tests within 180 calendar days after the compliance date that is specified in § 63.7783 for your affected source and report the results in your notification of compliance status.

(b) For each operation and maintenance requirement that applies to you where initial compliance is not demonstrated using a performance test or opacity observation, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified for your affected source in § 63.7783.

(c) If you commenced construction or reconstruction between July 13, 2001 and May 20, 2003, you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than November 17, 2003 or no later than 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(d) If you commenced construction or reconstruction between July 13, 2001 and May 20, 2003, and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by November 17, 2006, or no later than 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

### § 63.7821 When must I conduct subsequent performance tests?

You must conduct subsequent performance tests to demonstrate compliance with all applicable PM and opacity limits in Table 1 to this subpart no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit. For sources without a title V operating permit, you must conduct subsequent performance tests every 2.5 years.

### § 63.7822 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(e)(1) and the conditions detailed in paragraphs (b) through (i) of this section.

(b) To determine compliance with the applicable emission limit for particulate matter in Table 1 to this subpart, follow the test methods and procedures in paragraphs (b)(1) and (2) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5, 5D, or 17, as applicable, to determine the concentration of particulate matter (front half filterable catch only).

(2) Collect a minimum sample volume of 60 dry standard cubic feet (dscf) of gas during each particulate matter test run. Three valid test runs are needed to comprise a performance test.

(c) For each sinter plant windbox exhaust stream, you must complete the requirements of paragraphs (c)(1) and (2) of this section:

(1) Follow the procedures in your operation and maintenance plan for measuring and recording the sinter production rate for each test run in tons per hour; and

(2) Compute the process-weighted mass emissions ($E_p$) for each test run using Equation 1 of this section as follows:

$$E_p = \frac{C \times Q}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

$E_p$ = Process-weighted mass emissions of particulate matter, lb/ton;

C = Concentration of particulate matter, grains per dry standard cubic foot (gr/dscf);

Q = Volumetric flow rate of stack gas, dry standard cubic foot per hour (dscf/hr);

P = Production rate of sinter during the test run, tons/hr; and

K = Conversion factor, 7,000 grains per pound (gr/lb).

(d) If you apply two or more control devices in parallel to emissions from a sinter plant discharge end or a BOPF, compute the average flow-weighted concentration for each test run using Equation 2 of this section as follows:

$$C_W = \frac{\sum_{i=1}^{n} C_i Q_i}{\sum_{i=1}^{n} Q_i} \qquad \text{(Eq. 2)}$$

Where:

$C_w$ = Flow-weighted concentration, gr/dscf;

$C_i$ = Concentration of particulate matter from exhaust stream ''i'', gr/dscf; and

$Q_i$ = Volumetric flow rate of effluent gas from exhaust stream ''i'', dry standard cubic foot per minute (dscfm).

(e) For a control device applied to emissions from a blast furnace casthouse, sample for an integral number of furnace tapping operations sufficient to obtain at least 1 hour of sampling for each test run.

(f) For a primary emission control device applied to emissions from a BOPF with a closed hood system, sample only during the primary oxygen blow and do not sample during any subsequent reblows. Continue sampling for each run for an integral number of primary oxygen blows.

(g) For a primary emission control system applied to emissions from a BOPF with an open hood system and for a control device applied solely to secondary emissions from a BOPF, you must complete the requirements of paragraphs (g)(1) and (2) of this section:

(1) Sample only during the steel production cycle. Conduct sampling under conditions that are representative of normal operation. Record the start and end time of each steel production cycle and each period of abnormal operation; and

(2) Sample for an integral number of steel production cycles. The steel production cycle begins when the scrap is charged to the furnace and ends 3 minutes after the slag is emptied from the vessel into the slag pot.

(h) For a control device applied to emissions from BOPF shop ancillary operations (hot metal transfer, skimming, desulfurization, or ladle metallurgy), sample only when the operation(s) is being conducted.

(i) Subject to approval by the permitting authority, you may conduct representative sampling of stacks when there are more than three stacks associated with a process.

### § 63.7823 What test methods and other procedures must I use to demonstrate initial compliance with the opacity limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in § 63.7(h)(5) and the conditions detailed in paragraphs (b) through (d) of this section.

(b) You must conduct each visible emissions performance test such that the opacity observations overlap with the performance test for particulate matter.

(c) To determine compliance with the applicable opacity limit in Table 1 to this subpart for a sinter plant discharge end or a blast furnace casthouse:

(1) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter.

(2) Obtain a minimum of 30 6-minute block averages. For a blast furnace casthouse, make observations during tapping of the furnace. Tapping begins when the furnace is opened, usually by creating a hole near the bottom of the furnace, and ends when the hole is plugged.

(d) To determine compliance with the applicable opacity limit in Table 1 to this subpart for BOPF shops:

(1) For an existing BOPF shop:

(i) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter except as specified in paragraphs (d)(1)(ii) and (iii) of this section.

(ii) Instead of procedures in section 2.4 of Method 9 in appendix A to part 60 of this chapter, record observations to the nearest 5 percent at 15-second intervals for at least three steel production cycles.

(iii) Instead of procedures in section 2.5 of Method 9 in appendix A to part 60 of this chapter, determine the 3-minute block average opacity from the average of 12 consecutive observations recorded at 15-second intervals.

(2) For a new BOPF shop housing a bottom-blown BOPF:

(i) Using a certified observer, determine the opacity of emissions according to Method 9 in appendix A to part 60 of this chapter.

(ii) Determine the highest and second highest sets of 6-minute block average opacities for each steel production cycle.

(3) For a new BOPF shop housing a top-blown BOPF:

(i) Determine the opacity of emissions according to the requirements for an existing BOPF shop in paragraphs (d)(1)(i) through (iii) of this section.

(ii) Determine the highest and second highest sets of 3-minute block average opacities for each steel production cycle.

(4) Opacity observations must cover the entire steel production cycle and must be made for at least three cycles. The steel production cycle begins when the scrap is charged to the furnace and ends 3 minutes after the slag is emptied from the vessel into the slag pot.

(5) Determine and record the starting and stopping times of the steel production cycle.

### § 63.7824 What test methods and other procedures must I use to establish and demonstrate initial compliance with operating limits?

(a) For each capture system subject to an operating limit in § 63.7790(b)(1), you must certify that the system operated during the performance test at the site-specific operating limits established in your operation and maintenance plan using the procedures in paragraphs (a)(1) through (4) of this section.

(1) Concurrent with all opacity observations, measure and record values for each of the operating limit parameters in your capture system operation and maintenance plan according to the monitoring requirements specified in § 63.7830(a).

(2) For any dampers that are manually set and remain at the same position at all times the capture system is operating, the damper position must be visually checked and recorded at the beginning and end of each opacity observation period segment.

(3) Review and record the monitoring data. Identify and explain any times the capture system operated outside the applicable operating limits.

(4) Certify in your performance test report that during all observation period segments, the capture system was operating at the values or settings established in your capture system operation and maintenance plan.

(b) For a venturi scrubber subject to operating limits for pressure drop and scrubber water flow rate in

§ 63.7790(b)(2), you must establish site-specific operating limits according to the procedures in paragraphs (b)(1) and (2) of this section.

(1) Using the continuous parameter monitoring system (CPMS) required in § 63.7830(c), measure and record the pressure drop and scrubber water flow rate during each run of the particulate matter performance test.

(2) Compute and record the hourly average pressure drop and scrubber water flow rate for each individual test run. Your operating limits are the lowest average pressure drop and scrubber water flow rate value in any of the three runs that meet the applicable emission limit.

(c) For an electrostatic precipitator subject to the operating limit in § 63.7790(b)(3) for opacity, you must establish a site-specific operating limit according to the procedures in paragraphs (c)(1) through (3) of this section.

(1) Using the continuous opacity monitoring system (COMS) required in § 63.7830(d), measure and record the opacity of emissions from each control device stack during each run of the particulate matter performance test.

(2) Compute and record the 6-minute block average opacity from 36 or more data points equally spaced over each 6-minute period during the test runs.

(3) Determine, based on the 6-minute block averages, the opacity value corresponding to the 99 percent upper confidence limit on the mean of a normal distribution of average opacity values.

(d) You may change the operating limits for a capture system, venturi scrubber, or electrostatic precipitator if you meet the requirements in paragraphs (d)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate compliance with the applicable emission limitation in Table 1 to this subpart.

(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) through (c) of this section for a control device or capture system.

(e) For each sinter plant subject to the operating limit for the oil content of the sinter plant feedstock in § 63.7790(d)(1), you must demonstrate initial compliance according to the procedures in paragraphs (e)(1) through (3) of this section.

(1) Sample the feedstock at least three times a day (once every 8 hours), composite the three samples each day, and analyze the composited samples using Method 9071B, ''n-Hexane Extractable Material(HEM) for Sludge, Sediment, and Solid Samples,'' (Revision 2, April 1998). Method 9071B is incorporated by reference (see § 63.14) and is published in EPA Publication SW–846 ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods.'' Record the sampling date and time, oil content values, and sinter produced (tons/day).

(2) Continue the sampling and analysis procedure for 30 consecutive days.

(3) Each day, compute and record the 30-day rolling average using that day's value and the 29 previous daily values.

(f) To demonstrate initial compliance with the alternative operating limit for volatile organic compound emissions from the sinter plant windbox exhaust stream in § 63.7790(d)(2), follow the test methods and procedures in paragraphs (f)(1) through (5) of this section.

(1) Determine the volatile organic compound emissions according to the following test methods in appendix A to part 60 of this chapter:

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling ports must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 25 to determine the mass concentration of volatile organic compound emissions (total gaseous nonmethane organics as carbon) from the sinter plant windbox exhaust stream stack.

(2) Determine volatile organic compound (VOC) emissions every 24 hours (from at least three samples taken at 8-hour intervals) using Method 25 in 40 CFR part 60, appendix A. Record the sampling date and time, sampling results, and sinter produced (tons/day).

(3) Compute the process-weighted mass emissions ($E_v$) each day using Equation 1 of this section as follows:

$$E_v = \frac{M_C \times Q}{35.31 \times 454{,}000 \times K} \qquad \text{(Eq. 1)}$$

Where:

$E_v$ = Process-weighted mass emissions of volatile organic compounds, lb/ton;

$M_c$ = Average concentration of total gaseous nonmethane organics as carbon by Method 25 (40 CFR part 60, appendix A), milligrams per dry standard cubic meters (mg/dscm) for each day;

Q = Volumetric flow rate of stack gas, dscf/hr;

35.31 = Conversion factor (dscf/dscm);

454,000 = Conversion factor (mg/lb); and

K = Daily production rate of sinter, tons/hr.

(4) Continue the sampling and analysis procedure in paragraphs (f)(1) through (3) of this section for 30 consecutive days.

(5) Compute and record the 30-day rolling average of VOC emissions for each operating day.

(g) You may use an alternative test method to determine the oil content of the sinter plant feedstock or the volatile organic compound emissions from the sinter plant windbox exhaust stack if you have already demonstrated the equivalency of the alternative method for a specific plant and have received previous approval from the applicable permitting authority.

### § 63.7825 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each affected source subject to an emission or opacity limit in Table 1 to this subpart, you have demonstrated initial compliance if:

(1) You meet the conditions in Table 2 to this subpart; and

(2) For each capture system subject to the operating limit in § 63.7790(b)(1), you have established appropriate site-specific operating limit(s) and have a record of the operating parameter data measured during the performance test in accordance with § 63.7824(a)(1).

(3) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.7824(b); and

(4) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3), you have established an appropriate site-specific operating limit and have a record of the opacity measurements made during the performance test in accordance with § 63.7824(c).

(b) For each existing or new sinter plant subject to the operating limit in § 63.7790(d)(1), you have demonstrated initial compliance if the 30-day rolling average of the oil content of the feedstock, measured during the initial performance test in accordance with § 63.7824(e) is no more than 0.02

percent or the volatile organic compound emissions from the sinter plant windbox exhaust stream, measured during the initial performance test in accordance with § 63.7824(f), is no more than 0.2 lb/ton of sinter produced.

(c) For each emission limitation that applies to you, you must submit a notification of compliance status according to § 63.7840(e).

### § 63.7826 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

(a) For a capture system applied to emissions from a sinter plant discharge end or blast furnace casthouse or to secondary emissions from a BOPF, you have demonstrated initial compliance if you meet all of the conditions in paragraphs (a)(1) through (4) of this section.

(1) Prepared the capture system operation and maintenance plan according to the requirements of § 63.7800(b), including monthly inspection procedures and detailed descriptions of the operating parameter(s) selected to monitor the capture system;

(2) Certified in your performance test report that the system operated during the test at the operating limits established in your operation and maintenance plan;

(3) Submitted a notification of compliance status according to the requirements in § 63.7840(e), including a copy of the capture system operation and maintenance plan and your certification that you will operate the capture system at the values or settings established for the operating limits in that plan; and

(4) Prepared a site-specific monitoring plan according to the requirements in § 63.7831(a).

(b) For each control device subject to operating limits in § 63.7790(b)(2) or (3), you have demonstrated initial compliance if you meet all the conditions in paragraphs (b)(1) through (3) of this section.

(1) Prepared the control device operation and maintenance plan according to the requirements of § 63.7800(b), including a preventative maintenance schedule and, if applicable, detailed descriptions of the procedures you use for corrective action for baghouses;

(2) Submitted a notification of compliance status according to the requirements in § 63.7840(e), including a copy of the operation and maintenance plan; and

(3) Prepared a site-specific monitoring plan according to the requirements in § 63.7831(a).

## Continuous Compliance Requirements

### § 63.7830 What are my monitoring requirements?

(a) For each capture system subject to an operating limit in § 63.7790(b)(1) established in your capture system operation and maintenance plan, you must install, operate, and maintain a CPMS according to the requirements in § 63.7831(e) and the requirements in paragraphs (a)(1) through (3) of this section.

(1) Dampers that are manually set and remain in the same position are exempt from the requirement to install and operate a CPMS. If dampers are not manually set and remain in the same position, you must make a visual check at least once every 24 hours to verify that each damper for the capture system is in the same position as during the initial performance test.

(2) If you use a flow measurement device to monitor the operating limit parameter for a sinter plant discharge end or blast furnace casthouse, you must monitor the hourly average rate (*e.g.*, the hourly average actual volumetric flow rate through each separately ducted hood, the average hourly total volumetric flow rate at the inlet to the control device) according to the requirements in § 63.7832.

(3) If you use a flow measurement device to monitor the operating limit parameter for a capture system applied to secondary emissions from a BOPF, you must monitor the average rate for each steel production cycle (*e.g.*, the average actual volumetric flow rate through each separately ducted hood for each steel production cycle, the average total volumetric flow rate at the inlet to the control device for each steel production cycle) according to the requirements in § 63.7832.

(b) For each baghouse applied to meet any particulate emission limit in Table 1 of this subpart, you must install, operate, and maintain a bag leak detection system according to § 63.7831(f), monitor the relative change in particulate matter loadings according to the requirements in § 63.7832, and conduct inspections at their specified frequencies according to the requirements in paragraphs (b)(1) through (8) of this section.

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(3) Check the compressed air supply for pulse-jet baghouses each day.

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(c) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you must install, operate, and maintain CPMS according to the requirements in § 63.7831(g) and monitor the hourly average pressure drop and water flow rate according to the requirements in § 63.7832.

(d) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3), you must install, operate, and maintain a COMS according to the requirements in § 63.7831(h) and monitor the 6-minute average opacity of emissions exiting each control device stack according to the requirements in § 63.7832.

(e) For each sinter plant subject to the operating limit in § 63.7790(d), you must either:

(1) Compute and record the 30-day rolling average of the oil content of the feedstock for each operating day using the procedures in § 63.7824(e); or

(2) Compute and record the 30-day rolling average of volatile organic compound emissions (lbs/ton of sinter) for each operating day using the procedures in § 63.7824(f).

### § 63.7831 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each CPMS required in § 63.7830, you must develop and make available for inspection upon request by the permitting authority a site-specific monitoring plan that addresses the requirements in paragraphs (a)(1) through (6) of this section.

(1) Installation of the CPMS sampling probe or other interface at a

measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the parametric signal analyzer, and the data collection and reduction system;

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations);

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of §§ 63.8(c)(1), (c)(3), (c)(4)(ii), (c)(7), and (c)(8);

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(6) Ongoing recordkeeping and reporting procedures in accordance the general requirements of §§ 63.10(c), (e)(1), and (e)(2)(i).

(b) Unless otherwise specified, each CPMS must:

(1) Complete a minimum of one cycle of operation for each successive 15-minute period and collect a minimum of three of the required four data points to constitute a valid hour of data;

(2) Provide valid hourly data for at least 95 percent of every averaging period; and

(3) Determine and record the hourly average of all recorded readings.

(c) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(d) You must operate and maintain the CPMS in continuous operation according to the site-specific monitoring plan.

(e) For each capture system subject to an operating limit in § 63.7790(b)(1), you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a) through (d) of this section.

(f) For each baghouse applied to meet any particulate emission limit in Table 1 of this subpart, you must install, operate, and maintain a bag leak detection system according to the requirements in paragraphs (f)(1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(2) The system must provide output of relative changes in particulate matter loadings.

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel.

(4) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, ''Fabric Filter Bag Leak Detection Guidance,'' EPA–454/R–98–015, September 1997. You may install, operate, and maintain other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations.

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time.

(6) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition.

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(g) For each venturi scrubber subject to operating limits in § 63.7790(b)(2) for pressure drop and scrubber water flow rate, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (a) through (d) of this section.

(h) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3), you must install, operate, and maintain each COMS according to the requirements in paragraphs (h)(1) through (4) of this section.

(1) You must install, operate, and maintain each COMS according to Performance Specification 1 in 40 CFR part 60, appendix B.

(2) You must conduct a performance evaluation of each COMS according to § 63.8 and Performance Specification 1 in appendix B to 40 CFR part 60.

(3) Each COMS must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(4) COMS data must be reduced as specified in § 63.8(g)(2).

**§ 63.7832 How do I monitor and collect data to demonstrate continuous compliance?**

(a) Except for monitoring malfunctions, out-of-control periods as specified in § 63.8(c)(7), associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times an affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels or to fulfill a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance.

(c) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

**§ 63.7833 How do I demonstrate continuous compliance with the emission limitations that apply to me?**

(a) You must demonstrate continuous compliance for each affected source subject to an emission or opacity limit in § 63.7790(a) by meeting the requirements in Table 3 to this subpart.

(b) You must demonstrate continuous compliance for each capture system subject to an operating limit in § 63.7790(b)(1) by meeting the requirements in paragraphs (b)(1) and (2) of this section.

(1) Operate the capture system at or above the lowest values or settings established for the operating limits in your operation and maintenance plan; and

(2) Monitor the capture system according to the requirements in § 63.7830(a) and collect, reduce, and record the monitoring data for each of the operating limit parameters according to the applicable requirements of this subpart;

(c) For each baghouse applied to meet any particulate emission limit in Table 1 to this subpart, you must demonstrate continuous compliance by completing the requirements in paragraphs (c)(1) and (2) of this section:

(1) Maintaining records of the time you initiated corrective action in the event of a bag leak detection system alarm, the corrective action(s) taken, and the date on which corrective action was completed.

(2) Inspecting and maintaining each baghouse according to the requirements in § 63.7831(f) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.7831(f)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(d) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you must demonstrate continuous compliance by completing the requirements of paragraphs (d)(1) through (3) of this section:

(1) Maintaining the hourly average pressure drop and scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test;

(2) Operating and maintaining each venturi scrubber CPMS according to § 63.7831(g) and recording all information needed to document conformance with these requirements; and

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to § 63.7831(b) and recording all information needed to document conformance with these requirements.

(e) For each electrostatic precipitator subject to the site-specific opacity operating limit in § 63.7790(b)(3), you must demonstrate continuous compliance by completing the requirements of paragraphs (e)(1) and (2) of this section:

(1) Maintaining the average opacity of emissions for each 6-minute period no higher than the site-specific limit established during the initial or subsequent performance test; and

(2) Operating and maintaining each COMS and reducing the COMS data according to § 63.7831(h).

(f) For each new or existing sinter plant subject to the operating limit in § 63.7790(d), you must demonstrate continuous compliance by either:

(1) For the sinter plant feedstock oil content operating limit in § 63.7790(d)(1),

(i) Computing and recording the 30-day rolling average of the percent oil content for each operating day according to the performance test procedures in § 63.7824(e);

(ii) Recording the sampling date and time, oil content values, and sinter produced (tons/day); and

(iii) Maintaining the 30-day rolling average oil content of the feedstock no higher than 0.02 percent.

(2) For the volatile organic compound operating limit in § 63.7790(d)(2),

(i) Computing and recording the 30-day rolling average of volatile organic compound emissions for each operating day according to the performance test procedures in § 63.7824(f);

(ii) Recording the sampling date and time, sampling values, and sinter produced (tons/day); and

(iii) Maintaining the 30-day rolling average of volatile organic compound emissions no higher than 0.2 lb/ton of sinter produced.

### § 63.7834 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each capture system and control device subject to an operating limit in § 63.7790(b), you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7800(b) by meeting the requirements of paragraphs (a)(1) through (3) of this section:

(1) Making monthly inspections of capture systems and initiating corrective action according to § 63.7800(b)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance according to § 63.7800(b)(2) and recording all information needed to document conformance with these requirements; and

(3) Initiating and completing corrective action for a bag leak detection system alarm according to § 63.7800(b)(4) and recording all information needed to document conformance with these requirements.

(b) You must maintain a current copy of the operation and maintenance plan required in § 63.7800(b) onsite and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

### § 63.7835 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in § 63.7790 that applies to you. This includes periods of startup, shutdown, and malfunction. You also must report each instance in which you did not meet each operation and maintenance requirement in § 63.7800 that applies to you. These instances are deviations from the emission limitations and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.7841.

(b) *Startups, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

## Notifications, Reports, and Records

### § 63.7840 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(e) and (f)(4), and 63.9(b) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before May 20, 2003, you must submit your initial notification no later than September 17, 2003.

(c) As specified in § 63.9(b)(3), if you start your new affected source on or after May 20, 2003, you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, opacity observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

**§ 63.7841 What reports must I submit and when?**

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit a semiannual compliance report to your permitting authority according to the requirements in paragraphs (a)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7783 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your source in § 63.7783.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after your first compliance report is due.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date comes first after the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) *Compliance report contents.* Each compliance report must include the information in paragraphs (b)(1) through (3) of this section and, as applicable, paragraphs (b)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in §§ 63.7833 and 63.7834 that apply to you, a statement that there were no deviations from the emission limitations or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including a CPMS, COMS, or continuous emission monitoring system (CEMS) was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in § 63.7790 that occurs at an affected source where you are not using a continuous monitoring system (including a CPMS, COMS, or CEMS) to comply with an emission limitation in this subpart, the compliance report must contain the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (including a CPMS or COMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (b)(1) through (4) of this section and the information in paragraphs (b)(8)(i) through (xi) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system was out-of-control as specified in § 63.8(c)(7), including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period including those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) A brief description of the process units.

(ix) A brief description of the continuous monitoring system.

(x) The date of the latest continuous monitoring system certification or audit.

(xi) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(c) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(d) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or operation and maintenance requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements for an affected source to your permitting authority.

**§ 63.7842 What records must I keep?**

(a) You must keep the following records:

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of

compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity observations as required in § 63.10(b)(2)(viii).

(b) For each COMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in § 63.6(h)(6) for visual observations.

(d) You must keep the records required in §§ 63.7833 and 63.7834 to show continuous compliance with each emission limitation and operation and maintenance requirement that applies to you.

### § 63.7843 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

## Other Requirements and Information

### § 63.7850 What parts of the General Provisions apply to me?

Table 4 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

### § 63.7851 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternative opacity emission limits in Table 1 to this subpart under § 63.6(h)(9).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90, except for approval of an alternative method for the oil content of the sinter plant feedstock or volatile organic compound measurements for the sinter plant windbox exhaust stream stack as provided in § 63.7824(g).

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

### § 63.7852 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in § 63.2, and in this section as follows.

*Bag leak detection system* means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on tribroelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

*Basic oxygen process furnace* means any refractory-lined vessel in which high-purity oxygen is blown under pressure through a bath of molten iron, scrap metal, and fluxes to produce steel. This definition includes both top and bottom blown furnaces, but does not include argon oxygen decarburization furnaces.

*Basic oxygen process furnace shop* means the place where steelmaking operations that begin with the transfer of molten iron (hot metal) from the torpedo car and end prior to casting the molten steel, including hot metal transfer, desulfurization, slag skimming, refining in a basic oxygen process furnace, and ladle metallurgy occur.

*Basic oxygen process furnace shop ancillary operations* means the processes where hot metal transfer, hot metal desulfurization, slag skimming, and ladle metallurgy occur.

*Blast furnace* means a furnace used for the production of molten iron from iron ore and other iron bearing materials.

*Bottom-blown furnace* means any basic oxygen process furnace in which oxygen and other combustion gases are introduced into the bath of molten iron through tuyeres in the bottom of the vessel or through tuyeres in the bottom and sides of the vessel.

*Casthouse* means the building or structure that encloses the bottom portion of a blast furnace where the hot metal and slag are tapped from the furnace.

*Certified observer* means a visible emission observer certified to perform EPA Method 9 opacity observations.

*Desulfurization* means the process in which reagents such as magnesium, soda ash, and lime are injected into the hot metal, usually with dry air or nitrogen, to remove sulfur.

*Deviation* means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including operating limits) or operation and maintenance requirement;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

*Discharge end* means the place where those operations conducted within the sinter plant starting at the discharge of the sintering machine's traveling grate including (but not limited to) hot sinter crushing, screening, and transfer operations occur.

*Emission limitation* means any emission limit, opacity limit, or operating limit.

*Hot metal transfer station* means the location in a basic oxygen process furnace shop where molten iron (hot

metal) is transferred from a torpedo car or hot metal car used to transport hot metal from the blast furnace casthouse to a holding vessel or ladle in the basic oxygen process furnace shop. This location also is known as the reladling station or ladle transfer station.

*Integrated iron and steel manufacturing facility* means an establishment engaged in the production of steel from iron ore.

*Ladle metallurgy* means a secondary steelmaking process that is performed typically in a ladle after initial refining in a basic oxygen process furnace to adjust or amend the chemical and/or mechanical properties of steel.

*Primary emissions* means particulate matter emissions from the basic oxygen process furnace generated during the steel production cycle which are captured and treated in the furnace's primary emission control system.

*Primary emission control system* means the combination of equipment used for the capture and collection of primary emissions (*e.g.*, an open hood capture system used in conjunction with an electrostatic precipitator or a closed hood system used in conjunction with a scrubber).

*Primary oxygen blow* means the period in the steel production cycle of a basic oxygen process furnace during which oxygen is blown through the molten iron bath by means of a lance inserted from the top of the vessel (top-blown) or through tuyeres in the bottom and/or sides of the vessel (bottom-blown).

*Responsible official* means responsible official as defined in § 63.2.

*Secondary emissions* means particulate matter emissions that are not controlled by a primary emission control system, including emissions that escape from open and closed hoods, lance hole openings, and gaps or tears in ductwork to the primary emission control system.

*Secondary emission control system* means the combination of equipment used for the capture and collection of secondary emissions from a basic oxygen process furnace.

*Sinter cooler* means the apparatus used to cool the hot sinter product that is transferred from the discharge end through contact with large volumes of induced or forced draft air.

*Sinter plant* means the machine used to produce a fused clinker-like aggregate or sinter of fine iron-bearing materials suited for use in a blast furnace. The machine is composed of a continuous traveling grate that conveys a bed of ore fines and other finely divided iron-bearing material and fuel (typically coke breeze), a burner at the feed end of the grate for ignition, and a series of downdraft windboxes along the length of the strand to support downdraft combustion and heat sufficient to produce a fused sinter product.

*Skimming station* means the locations inside a basic oxygen process furnace shop where slag is removed from the top of the molten metal bath.

*Steel production cycle* means the operations conducted within the basic oxygen process furnace shop that are required to produce each batch of steel. The following operations are included: scrap charging, preheating (when done), hot metal charging, primary oxygen blowing, sampling, (vessel turndown and turnup), additional oxygen blowing (when done), tapping, and deslagging. The steel production cycle begins when the scrap is charged to the furnace and ends after the slag is emptied from the vessel into the slag pot.

*Top-blown furnace* means any basic oxygen process furnace in which oxygen is introduced into the bath of molten iron by means of an oxygen lance inserted from the top of the vessel.

*Windboxes* means the compartments that provide for a controlled distribution of downdraft combustion air as it is drawn through the sinter bed of a sinter plant to make the fused sinter product.

**Tables to Subpart FFFFF of Part 63**

TABLE 1 TO SUBPART FFFFF OF PART 63.—EMISSION AND OPACITY LIMITS

[As required in § 63.7790(a), you must comply with each applicable emission and opacity limit in the following table]

| For . . . | You must comply with each of the following . . . |
|---|---|
| 1. Each windbox exhaust stream at an existing sinter plant. | You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.4 lb/ton of product sinter. |
| 2. Each windbox exhaust stream at a new sinter plant. | You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.3 lb/ton of product sinter. |
| 3. Each discharge end at an existing sinter plant | a. You must not cause to be discharged to the atmosphere any gases that exit from one or more control devices that contain, on a flow-weighted basis, particulate matter in excess of 0.02 gr/dscf [1]; and<br>b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the building or structure housing the discharge end that exhibit opacity greater than 20 percent (6-minute average). |
| 4. Each discharge end at a new sinter plant ..... | a. You must not cause to be discharged to the atmosphere any gases that exit from one or more control devices that contain, on a flow weighted basis, particulate matter in excess of 0.01 gr/dscf; and<br>b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the building or structure housing the discharge end that exhibit opacity greater than 10 percent (6-minute average). |
| 5. Each sinter cooler stack at an existing sinter plant. | You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.03 gr/dscf. |
| 6. Each sinter cooler stack at a new sinter plant .. | You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.01 gr/dscf. |
| 7. Each casthouse at an existing blast furnace ..... | a. You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf; and<br>b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the casthouse or structure housing the blast furnace that exhibit opacity greater than 20 percent (6-minute average). |
| 8. Each casthouse at a new blast furnace ..... | a. You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.003 gr/dscf; and<br>b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the casthouse or structure housing the blast furnace that exhibit opacity greater than 15 percent (6-minute average). |

TABLE 1 TO SUBPART FFFFF OF PART 63.—EMISSION AND OPACITY LIMITS—Continued

[As required in § 63.7790(a), you must comply with each applicable emission and opacity limit in the following table]

| For . . . | You must comply with each of the following . . . |
|---|---|
| 9. Each BOPF at a new or existing shop | a. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with a closed hood system at a new or existing BOPF shop that contain, on a flow-weighted basis, particulate matter in excess of 0.03 gr/dscf during the primary oxygen blow [2];<br>b. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with an open hood system that contain, on a flow-weighted basis, particulate matter in excess of 0.02 gr/dscf during the steel production cycle for an existing BOPF shop or 0.01 gr/dscf during the steel production cycle for a new BOPF shop [2]; and<br>c. You must not cause to be discharged to the atmosphere any gases that exit from a control device used solely for the collection of secondary emissions from the BOPF that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop. |
| 10. Each hot metal transfer, skimming, and desulfurization operation at a new or existing BOPF shop. | You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop or 0.003 gr/dscf for a new BOPF shop. |
| 11. Each ladle metallurgy operation at a new or existing BOPF shop. | You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop or 0.004 gr/dscf for a new BOPF shop. |
| 12. Each roof monitoring at an existing BOPF shop. | You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or any other building housing the BOPF or BOPF shop operation that exhibit opacity greater than 20 percent (3-minute average). |
| 13. Each roof monitor at a new BOPF shop | a. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or other building housing a bottom-blown BOPF or BOPF shop operations that exhibit opacity (for any set of 6-minute averages) greater than 10 percent, except that one 6-minute period not to exceed 20 percent may occur once per steel production cycle; or<br>b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the BOPF shop or other building housing a top-blown BOPF or BOPF shop operations that exhibit opacity (for any set of 3-minute averages) greater than 10 percent, except that one 3-minute period greater than 10 percent but less than 20 percent may occur once per steel production cycle. |

[1] This limit applies if the cooler is vented to the same control device as the discharge end.
[2] This limit applies to control devices operated in parallel for a single BOPF during the oxygen blow.

TABLE 2 TO SUBPART FFFFF OF PART 63.—INITIAL COMPLIANCE WITH EMISSION AND OPACITY LIMITS

[As required in § 63.7825(a)(1), you must demonstrate initial compliance with the emission and opacity limits according to the following table]

| For . . . | You have demonstrated initial compliance if . . . |
|---|---|
| 1. Each windbox exhaust stream at an existing sinter plant. | The process-weighted mass rate of particulate matter from a windbox exhaust stream, measured according to the performance test procedures in § 63.7822(c), did not exceed 0.4 lb/ton of product sinter. |
| 2. Each windbox exhaust stream at a new sinter plant. | The process-weighted mass rate of particulate matter from a windbox exhaust stream, measured according to the performance test procedures in § 63.7822(c), did not exceed 0.3 lb/ton of product sinter. |
| 3. Each discharge end at an existing sinter plant | a. The flow-weighted average concentration of particulate matter from one or more control devices applied to emissions from a discharge end, measured according to the performance test procedures in § 63.7822(d), did not exceed 0.02 gr/dscf; and<br>b. The opacity of secondary emissions from each discharge end, determined according to the performance test procedures in § 63.7823(c), did not exceed 20 percent (6-minute average). |
| 4. Each discharge end at a new sinter plant | a. The flow-weighted average concentration of particulate matter from one or more control devices applied to emissions from a discharge end, measured according to the performance test procedures in § 63.7822(d), did not exceed 0.01 gr/dscf; and<br>b. The opacity of secondary emissions from each discharge end, determined according to the performance test procedures in § 63.7823(c), did not exceed 10 percent (6-minute average). |
| 5. Each sinter cooler stack at an existing sinter plant. | The average concentration of particulate matter from a sinter cooler stack, measured according to the performance test procedures in § 63.7822(b), did not exceed 0.03 gr/dscf. |
| 6. Each sinter cooler stack at a new sinter plant | The average concentration of particulate matter from a sinter cooler stack, measured according to the performance test procedures in § 63.7822(b), did not exceed 0.01 gr/dscf. |
| 7. Each casthouse at an existing blast furnace | a. The average concentration of particulate matter from a control device applied to emissions from a casthouse, measured according to the performance test procedures in § 63.7822(e), did not exceed 0.01 gr/dscf; and<br>b. The opacity of secondary emissions from each casthouse, determined according to the performance test procedures in § 63.7823(c), did not exceed 20 percent (6-minute average). |

TABLE 2 TO SUBPART FFFFF OF PART 63.—INITIAL COMPLIANCE WITH EMISSION AND OPACITY LIMITS—Continued

[As required in § 63.7825(a)(1), you must demonstrate initial compliance with the emission and opacity limits according to the following table]

| For . . . | You have demonstrated initial compliance if . . . |
|---|---|
| 8. Each casthouse at a new blast furnace | a. The average concentration of particulate matter from a control device applied to emissions from a casthouse, measured according to the performance test procedures in § 63.7822(e), did not exceed 0.003 gr/dscf; and<br>b. The opacity of secondary emissions from each casthouse, determined according to the performance test procedures in § 63.7823(c), did not exceed 15 percent (6-minute average). |
| 9. Each BOPF at a new or existing BOPF shop | a. The average concentration of particulate matter from a primary emission control system applied to emissions from a BOPF with a closed hood system, measured according to the performance test procedures in § 63.7822(f), did not exceed 0.03 gr/dscf for a new or existing BOPF shop;<br>b. The average concentration of particulate matter from a primary emission control system applied to emissions from a BOPF with an open hood system, measured according to the performance test procedures in § 63.7822(g), did not exceed 0.02 gr/dscf for an existing BOPF shop or 0.01 gr/dscf for a new BOPF shop; and<br>c. The average concentration of particulate matter from a control device applied solely to secondary emissions from a BOPF, measured according to the performance test procedures in § 63.7822(g), did not exceed 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop. |
| 10. Each hot metal transfer skimming, and desulfurization at a new or existing BOPF shop. | The average concentration of particulate matter from a control device applied to emissions from hot metal transfer, skimming, or desulfurization, measured according to the performance test procedures in § 63.7822(h), did not exceed 0.01 gr/dscf for an existing BOPF shop or 0.003 gr/dscf for a new BOPF shop. |
| 11. Each ladle metallurgy operation at a new or existing BOPF shop. | The average concentration of particulate matter from a control device applied to emissions from a ladle metallurgy operation, measured according to the performance test procedures in § 63.7822(h), did not exceed 0.01 gr/dscf for an existing BOPF shop or 0.004 gr/dscf for a new BOPF shop. |
| 12. Each roof monitor at an existing BOPF shop | The opacity of secondary emissions from each BOPF shop, determined according to the performance test procedures in § 63.7823(d), did not exceed 20 percent (3-minute average). |
| 13. Each roof monitor at a new BOPF shop | a. The opacity of the highest set of 6-minute averages from each BOPF shop housing a bottom-blown BOPF, determined according to the performance test procedures in § 63.7823(d), did not exceed 20 percent and the second highest set of 6-minute averages did not exceed 10 percent; or<br>b. The opacity of the highest set of 3-minute averages from each BOPF shop housing a top-blown BOPF, determined according to the performance test procedures in § 63.7823(d), did not exceed 20 percent and the second highest set of 3-minute averages did not exceed 10 percent. |

TABLE 3 TO SUBPART FFFFF OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION AND OPACITY LIMITS

[As required in § 63.7833(a), you must demonstrate continuous compliance with the emission and opacity limits according to the following table]

| For . . . | You must demonstrate continuous compliance by . . . |
|---|---|
| 1. Each windbox exhaust stream at an existing sinter plant. | a. Maintaining emissions of particulate matter at or below 0.4 lb/ton of product sinter; and<br>b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 2. Each windbox exhaust stream at a new sinter plant. | a. Maintaining emissions of particulate matter at or below 0.3 lb/ton of product sinter; and<br>b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 3. Each discharge end at an existing sinter plant | a. Maintaining emissions of particulate matter from one or more control devices at or below 0.02 gr/dscf; and<br>b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 20 percent (6-minute average); and<br>c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 4. Each discharge end at a new sinter plant | a. Maintaining emissions of particulate matter from one or more control devices at or below 0.01 gr/dscf;<br>b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 10 percent (6-minute average); and<br>c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 5. Each sinter cooler stack at an existing sinter plant. | a. Maintaining emissions of particulate matter at or below 0.03 gr/dscf; and<br>b. Conducting subsequent performance sinter plant tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 6. Each sinter cooler stack at a new sinter plant | a. Maintaining emissions of particulate matter at or below 0.01 gr/dscf; and<br>b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 7. Each casthouse at an existing blast furnace | a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf; |

TABLE 3 TO SUBPART FFFFF OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION AND OPACITY LIMITS—Continued

[As required in § 63.7833(a), you must demonstrate continuous compliance with the emission and opacity limits according to the following table]

| For . . . | You must demonstrate continuous compliance by . . . |
|---|---|
| | b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or structure housing the blast furnace at or below 20 percent (6-minute average); and<br>c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 8. Each casthouse at a new blast furnace | a. Maintaining emissions of particulate matter from a control device at or below 0.003 gr/dscf;<br>b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or building housing the casthouse at or below 15 percent (6-minute average); and<br>c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 9. Each BOPF at a new or existing BOPF shop | a. Maintaining emissions of particulate matter from the primary emission control system for a BOPF with a closed hood system at or below 0.03 gr/dscf;<br>b. Maintaining emissions of particulate matter from the primary emission control system for a BOPF with an open hood system at or below 0.02 gr/dscf for an existing BOPF shop or 0.01 gr/dscf for a new BOPF shop;<br>c. Maintaining emissions of particulate matter from a control device applied solely to secondary emissions from a BOPF at or below 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop; and<br>d. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 10. Each hot metal transfer, skimming, and desulfurization operation at a new or existing BOPF shop. | a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf at an existing BOPF or 0.003 gr/dscf for a new BOPF; and<br>b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 11. Each ladle metallurgy operation at a new or existing BOPF shop. | a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf at an existing BOPF shop or 0.004 gr/dscf for a new BOPF shop; and<br>b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 12. Each roof monitor at an existing BOPF shop | a. Maintaining the opacity of secondary emissions that exit any opening in the BOPF shop or other building housing the BOPF or shop operation at or below 20 percent (3-minute average); and<br>b. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |
| 13. Each roof monitor at a new BOPF shop | a. Maintaining the opacity (for any set of 6-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building housing a bottom-blown BOPF or shop operation at or below 10 percent, except that one 6-minute period greater than 10 percent but no more than 20 percent may occur once per steel production cycle;<br>b. Maintaining the opacity (for any set of 3-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building housing a top-blown BOPF or shop operation at or below 10 percent, except that one 3-minute period greater than 10 percent but less than 20 percent may occur once per steel production cycle; and<br>c. Conducting subsequent performance tests at least twice during each term of your title V operating permit (at midterm and renewal). |

TABLE 4 TO SUBPART FFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFF

[As required in § 63.7850, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table]

| Citation | Subject | Applies to Subpart FFFFF | Explanation |
|---|---|---|---|
| § 63.1 | Applicability | Yes. | |
| § 63.2 | Definitions | Yes. | |
| § 63.3 | Units and Abbreviations | Yes. | |
| § 63.4 | Prohibited Activities | Yes. | |
| § 63.5 | Construction/Reconstruction | Yes. | |
| § 63.6(a), (b), (c), (d), (e), (f), (g), (h)(2)(ii)–(h)(9). | Compliance with Standards and Maintenance Requirements. | Yes. | |
| § 63.6(h)(2)(i) | Determining Compliance with Opacity and VE Standards. | No | Subpart FFFFF specifies Method 9 in appendix A to part 60 of this chapter to comply with roof monitor opacity limits. |
| § 63.7(a)(1)–(2) | Applicability and Performance Test Dates. | No | Subpart FFFFF and specifies performance test applicability and dates. |
| § 63.7(a)(3), (b), (c)–(h) | Performance Testing Requirements | Yes. | |
| § 63.8(a)(1)–(a)(3), (b), (c)(1)–(3), (c)(4)(i)–(e), (c)(7)–(8), (f)(1)–(5), (g)(1)–(4). | Monitoring Requirements | Yes | CMS requirements in § 63.8(c)(4) (i)–(ii), (c)(5) and (6), (d), and (e) apply only to COMS for electrostatic precipitators. |

TABLE 4 TO SUBPART FFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFF—Continued

[As required in § 63.7850, you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) shown in the following table]

| Citation | Subject | Applies to Subpart FFFFF | Explanation |
|---|---|---|---|
| § 63.8(a)(4) | Additional Monitoring Requirements for Control Devices in § 63.11. | No | Subpart FFFFF does not require flares. |
| § 63.8(c)(4) | Continuous Monitoring System Requirements. | No | Subpart FFFFF specifies requirements for operation of CMS. |
| § 63.8(f)(6) | RATA Alternative | No. | |
| § 63.9 | Notification Requirements | Yes | Additional notifications for CMS in § 63.9(g) apply to COMS for electrostatic precipitators. |
| § 63.9(g)(5) | DATA Reduction | No | Subpart FFFFF specifies data reduction requirements. |
| § 63.10(a), (b)(1)–(2)(xii), (b)(2)(xiv), (b)(3), (c)(1)–(6), (c)(9)–(15), (d), (e)(1)–(2), (e)(4), (f). | Recordkeeping and Reporting Requirements. | Yes | Additional records for CMS in § 63.10(c) (1)–(6), (9)–(15), and reports in § 63.10(d)(1)–(2) apply only to COMS for electrostatic precipitators. |
| § 63.10(b)(2)(xiii) | CMS Records for RATA Alternative | No. | |
| § 63.10(c)(7)–(8) | Records of Excess Emissions and Parameter Monitoring Exceedances for CMS. | No | Subpart FFFFF specifies record requirements. |
| § 63.11 | Control Device Requirements | No | Subpart FFFFF does not require flares. |
| § 63.12 | State Authority and Delegations | Yes. | |
| § 63.13–§ 63.15 | Addresses, Incorporation by Reference, Availability of Information. | Yes. | |

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# Part III

# Department of Housing and Urban Development

## Notice of Funding Availability (NOFA) for the Research Studies on Homeownership and Affordable Lending Fiscal Year (FY 2002); Notice

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4778–N–01]**

## Notice of Funding Availability (NOFA) for the Research Studies on Homeownership and Affordable Lending Fiscal Year (FY 2002)

**AGENCY:** Office of Policy Development and Research, HUD.

**ACTION:** Notice of funding availability (NOFA).

**SUMMARY:** *Purpose of the NOFA.* The purpose of this NOFA is to fund technical studies that will guide development of public policy to increase affordable lending, reduce downpayment constraints, and promote homeownership, especially for low- and moderate-income and minority families and in geographical areas which have been underserved by the mortgage finance system. HUD particularly seeks studies that will provide empirical basis for its regulation and monitoring of two Government-Sponsored Enterprises (GSEs)—Fannie Mae and Freddie Mac, including the effects of such regulation and monitoring on affordable lending in the primary mortgage market. Specific topics of interest include:

**1. Homeownership**

a. Factors underlying the increase in homeownership during the 1990s and policy implications for the current decade;

b. Accounting for the remaining income and racial disparities in homeownership rates, and policy approaches that could remove barriers for prospective low-income and minority homeowners; and

c. Supply constraints and regulatory barriers that impact homeownership opportunities and could potentially impair the effectiveness of affordable lending programs.

**2. Affordable Lending**

a. Determinants of problems faced by low-income and minority families in accessing mortgage credit;

b. Determinants of downpayments;

c. The role of major mortgage market institutions such as Fannie Mae, Freddie Mac, the Federal Housing Administration, and depository institutions in increasing credit access for low- and moderate-income and minority families and their communities; and

d. Effects on targeted populations of setting alternative levels of the GSE affordable housing goals and defining the goals in alternative ways.

*Available Funds.* $570,000 from HUD's FY 2002 research and technology appropriation. HUD anticipates funding 15 to 20 studies on these topics; studies will be funded through cooperative agreements, up to a maximum of $40,000.

*Eligible Applicants.* Academic and not-for-profit institutions located in the U.S., state and local governments, and federally recognized Indian tribes are eligible to apply. For-profit businesses also are eligible; however, they are not allowed to earn a fee or profit.

*Application Deadline.* July 21, 2003.

*Match.* None required.

### Additional Information

*I. Application Due Date, Further Information and Technical Assistance*

*Application Due Date.* Your completed application is due on or before July 21, 2003.

*Address for Submitting Applications.* All applications must be either mailed or sent via overnight/express mail delivery, addressed to: Department of Housing and Urban Development, Financial Institutions Regulation Division, Office of Policy Development and Research, 451 Seventh St., SW., Room 8212, Washington, DC 20410.

*Application Submission Requirements. New Security Procedures.* HUD has implemented new security procedures that affect application submission procedures. Please read the following instructions carefully and completely. HUD will not accept hand-delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via one of the following delivery services: DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or United States Postal Service Express Mail. *No other delivery services are permitted into HUD Headquarters without escort. You must, therefore, use one of these carriers.*

*Mailed Applications.* Your application will be considered timely filed if your application is postmarked on or before 12 midnight on the application due date and received by the designated HUD office on or within fifteen (15) calendar days of the application due date. *All applicants must obtain and save* a Certificate of Mailing showing the date when the application was submitted to the USPS. The Certificate of Mailing (which is USPS Form 3817) will be your documentary evidence that your application was timely filed.

*Applications Sent by Overnight/Express Mail Delivery.* If your application is sent by overnight delivery or express mail, your application will be timely filed if it is received before or on the application due date, or when you submit documentary evidence that your application was placed in transit with the overnight delivery/express mail service by no later than the application due date. Due to new security measures, you must use either USPS express mail or one of four carrier services that do business with HUD headquarters regularly. These services are DHL, Falcon Carrier, FedEx, and UPS. Delivery by these services must be made during HUD's headquarters business hours, *i.e.*, between 8:30 a.m. and 5:30 p.m. eastern time, Monday through Friday.

*Other Transmission Methods.* Only applications submitted via mail or one of the express carrier services identified above will be accepted. Facsimile, e-mail, or other types of transmission are not acceptable.

*For Further Information.* You may contact: Dr. John Gardner, Financial Institutions Regulation Division, at the Department of Housing and Urban Development, Financial Institutions Regulation Division, Office of Policy Development and Research, 451 Seventh St., SW., Room 8212, Washington, DC 20410, telephone (202) 708–0614, extension 5868, or Mr. Patrick Tewey, Grants Officer, extension 4098 (these are not toll-free numbers). Hearing- and speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

*II. Amount Allocated*

Approximately $570,000 from HUD's FY 2002 Research and Technology appropriation will be available to fund research studies proposals in FY 2002. Cooperative agreements will be awarded on a competitive basis according to the Rating Factors described in Section VII(D). HUD anticipates awarding 15 to 20 cooperative agreements ranging up to $40,000 each. Applications exceeding this amount (unless the excess is provided through cost-sharing) will be deemed to be non-responsive.

*III. Program Description; Eligible Applicants; Eligible Activities*

(A) *Program Description. Background.*

(1) *General Goals and Objectives. Homeownership.* HUD invites proposals for studies of:

(i) Homeownership changes during the 1990s, particularly models that explain national and local trends in home buying, and policy implications of the changes;

(ii) How economic, demographic, and other factors influence gains and losses in homeownership across metropolitan and rural housing markets;

(iii) Factors that enable low-income families to stay in their homes;

(iv) House price changes and associated impacts on affordability;

(v) Effects of supply constraints, including zoning or other types of regulations, that restrict housing supply and could create barriers to homeownership and lessen the impacts of targeted affordable housing programs; and

(vi) Issues related to immigrant homeownership, the causes of racial gaps in homeownership, and other important policy issues and topics related to homeownership. These studies should provide diverse insights on homeownership across local housing markets, which will help HUD identify the best vehicles to advance its future homeownership strategies to close existing gaps in homeownership.

*Affordable Lending. HUD invites proposals for studies of:*

(i) The effects on lower-income families of the increase in low-downpayment mortgage programs and the growth of affordable lending during the 1990s, and particularly the programs of Fannie Mae and Freddie Mac;

(ii) The role of major mortgage market institutions such as Fannie Mae, Freddie Mac, the Federal Housing Administration, and depository institutions in increasing credit access for low- and moderate-income and minority families and their communities;

(iii) The extent to which low-downpayment initiatives have furthered affordable lending and homeownership;

(iv) Effects on targeted populations of setting alternative levels of the GSE affordable housing goals and defining the goals in alternative ways; and

(v) Barriers that limit access to credit for low-income and minority families and families in inner cities and low-income neighborhoods.

(2) *Background on Homeownership.* Promoting homeownership has been a long-standing goal of HUD. Underlying this goal is the belief that homeownership is an important aspiration of many American families and that homeownership confers advantages to the homeowner family as well as to society at large. An owned home can provide a decent and safe living environment and is an important source of wealth accumulation. The wealth accumulated from homeownership has made possible the funding of college education of children and a secure retirement for many American families. The homeownership rate is at a record high, not only for the entire population, but also for the major minority groups in the nation. Even with the current high homeownership rates, many American families who do not yet own a home continue to aspire for homeownership. Homeownership studies are part of an ongoing agenda at HUD to increase opportunities for homeownership for low-income and minority households.[1] HUD recently sponsored studies of the benefits of homeownership [2] and the impact of the GSE housing goals on homeownership.[3] HUD's Office of Policy Development and Research recently published staff research on homeownership issues.[4] HUD has an ongoing study on the determinants of homeownership gaps among low-income and minority borrowers and neighborhoods.[5] The studies under this Request for Applications will complement these other studies.

(3) *Background on Affordable Lending. Growth of Affordable Lending During the 1990s.* Economic expansion and lower mortgage rates substantially improved housing affordability during the 1990s. These underlying economic developments were enhanced by new and expanded affordable lending programs developed by primary mortgage market originators, private mortgage insurers, nonprofits, and Fannie Mae and Freddie Mac. During the 1990s, FHA also continued to offer its low-downpayment program that was particularly attractive to low-income and minority first-time homebuyers. As a result of initiatives in both the conventional and government markets, many young, low-income, and minority families who were closed out of the housing market during the 1980s re-entered the market during the 1990s. However, many households still lacked the financial resources and earning power to take advantage of housing opportunities in recent years. Several trends contributed to the reduction in the real earnings of young adults without college education over the last 15 years, including technological changes that favored white-collar employment, losses of manufacturing jobs, and wage pressures exerted by globalization. Fully 45 percent of the nation's population between the ages of 25 and 34 have no advanced education and are therefore at risk of being unable to afford homeownership. This is especially true of African Americans and Hispanics, who have lower average levels of educational attainment than whites.

*HUD's Secondary Mortgage Market Regulatory Role.* Fannie Mae and Freddie Mac, government-sponsored enterprises (GSEs) in the secondary mortgage market, are the two largest sources of housing finance in the United States. They play a dominant role in determining the nature and volume of affordable lending activities in the primary mortgage market. They provide funding for additional mortgage lending by purchasing loans from mortgage lenders and holding purchased loans in portfolio. Fannie Mae and Freddie Mac also issue mortgage-backed securities (MBS), which are then sold in the capital markets to a wide variety of investors.

In 1992, Congress enacted the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA). This act established the current regulatory structure for the GSEs. One important aspect of this legislation required the Secretary of HUD to establish annual affordable and geographic goals for the GSEs' purchases of mortgages. Under this authority, the Secretary initially set goals for 1993–95 (referred to as the "transition period"), raised them for 1996–2000, and raised them again for 2001–03. The three broad goals include:

1. A low- and moderate-income goal, which focuses on families with below-median incomes;

2. An underserved areas goal, targeted to low-income and minority census tracts in metropolitan areas and counties in non-metro areas; and

[1] In this NOFA, "low-income households" refers generally to households with incomes below 80 percent of area median income. Details appear in HUD's regulation on its oversight of Fannie Mae and Freddie Mac, at 24 CFR part 81.

[2] Robert Dietz and Donald R. Haurin, "The Social and Private Consequences of Homeownership." Report submitted to the U.S. Department of Housing and Urban Development, Office of Policy Development and Research, May 15, 2001, Grant P-CHI–00615.

[3] Brent Ambrose, Thomas Thibodeau, and Ken Temkin, *An Analysis of the Effects of the GSE Affordable Goals on Low- and Moderate-Income Families.* Conducted under contract by the Urban Institute for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research, April 2002.

[4] Recent examples include "First-Time Homebuyers: Trends From The American Housing Survey," *U.S. Housing Market Conditions, 3rd Quarter 2001*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, November 2001; and "Changing Importance of Unmarried Women as Homebuyers: Trends From The American Housing Survey," *U.S. Housing Market Conditions, 4th Quarter 2001*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, February 2002.

[5] A HUD-funded study, "Homeownership Gaps Among Low-Income and Minority Borrowers and Neighborhoods," is being conducted by Abt Associates under contract C–OPC–21895 Task Order 4.

3. A special affordable goal, directed to very low-income families and low-income families in low-income areas.

Congress also expressed concern in 1992 about an ''information vacuum'' with regard to the activities of Fannie Mae and Freddie Mac. Thus, FHEFSSA required the GSEs to submit loan-level data to the Secretary about their mortgage purchases, including detailed information on borrower, property, and mortgage characteristics. It also required HUD, after taking proprietary considerations into account, to make the loan-level data submitted by the GSEs available to interested parties in the form of a public use database. The studies to be funded under this NOFA will further this mission of providing state-of-the-art research on the affordable lending efforts of Fannie Mae and Freddie Mac.

*Previous and Ongoing PD&R Research.* The Financial Institutions Regulation Division of the Office of Policy Development and Research (PD&R) has conducted considerable internal research on affordable lending in recent years, and it has contracted for or provided grants for additional research.

Specifically, the Division inaugurated a series of studies, *Working Papers in Housing Finance*, which has resulted in the publication of 16 reports to date. The most recent papers are ''The GSEs' Funding of Affordable Loans: A 2000 Update,'' by Harold L. Bunce, and ''Black and White Disparities in Subprime Mortgage Refinance Lending,'' by Randall M. Scheessele, both published in April 2002, and ''Goal Performance and Characteristics of Mortgages Purchased by Fannie Mae and Freddie Mac, 1998–2000,'' by Paul B. Manchester, published in May 2002.

In 1997, the Division funded grants for 11 studies on various aspects of the GSEs' mortgage purchase activities. These studies provided useful background information for the reconsideration of the housing goals in 2000. Five of these studies were published in PD&R's journal *Cityscape*, Volume 5, Number 3 (2001), and four more were published in *Cityscape*, Volume 6, Number 1 (2002). The other two studies have been published in professional journals.

Examples of recent contract studies funded by the Financial Institutions Regulation Division include three studies by the Urban Institute: *A Study of the GSEs' Single Family Underwriting Guidelines* (February 1999); *Subprime Markets, the Role of the GSEs, and Risk-Based Pricing* (March 2002); and, *An Analysis of the Effects of the GSE Affordable Goals on Low- and Moderate-Income Families* (May 2002). In addition, Abt Associates wrote *A Study of Multifamily Underwriting and the GSEs' Role in the Multifamily Market* (August 2001). Additional studies are underway.

(4) *Background on Relevant Data Sources.* HUD anticipates that a variety of mortgage and housing market data sources may be used, including the 1990 and 2000 censuses, Home Mortgage Disclosure Act (HMDA) data, American Housing Survey, Panel Survey of Income Dynamics, Survey of Consumer Finance, Survey of Residential Finance, and databases on mortgages insured by the Federal Housing Administration and mortgages purchased or securitized by Fannie Mae and Freddie Mac, among others. For example, the Census 2000 long-form data on family incomes and housing characteristics provide an important data source for examining issues covered by this solicitation. HUD anticipates that these studies will be among the first to utilize these newly available Census data to examine issues related to homeownership and affordable lending. The American Housing Survey offers a consistent longitudinal sample to study homeownership and affordable lending issues through 2001.

The GSEs have provided HUD with loan-level data on each of their mortgage transactions since the beginning of 1993. From this database, HUD has extracted a Public Use Data Base for each calendar year from 1993 through 2001. The single-family component of the Public Use Data Base is structured as three separate loan-level data files including fields such as the loan amount, the census tract location of each property backing a GSE mortgage acquisition, demographic characteristics of these tracts, loan-to-value ratio, degree of affordability, demographic information on the borrower, loan purpose (refinance/purchase), and whether the property is owner-occupied.

(B) *Eligible Activities.*

Below you will find a listing of major topics and questions on which HUD seeks information. HUD is interested in high-quality research that offers a unique contribution to the literature on affordable lending and homeownership.

- Your study may combine descriptive and analytical approaches.
- Your study may identify or measure the factors associated with particular outcomes and the underlying causes of particular outcomes.
- You may describe and analyze the impacts of existing policies, and in this case your proposal should highlight the policy implications of the potential findings of your proposed research, particularly with respect to affordable lending and homeownership policies that have been successful in underserved markets.
- Your methodology may include statistical techniques, econometric estimation, application of geographic information systems (GIS) techniques, case studies, or critical review of the present state of knowledge and meta-analysis of existing studies. In each case, the methodology must reflect the state-of-the-art in the respective discipline.
- If your study is empirical, your final report must include a succinct discussion of the literature related to the issue being analyzed that provides background for the methodology of the study and a useful context for identifying the analytical and policy contributions of the study.

(1) *Studies on Homeownership.*

(a) *Changes in Homeownership Rates.* The release of the 2000 Census data (short and long form data) now presents an opportunity to study changes in homeownership over the past decade (1990–2000), at both the national and local levels. Similarly, the recent release of the 2001 American Housing Survey offers the opportunity to study homeownership changes over the past 10–15 years with that database as well. The 1990s was a decade that saw a great emphasis on promoting homeownership. Significant housing policy measures such as the setting of quantitative goals for GSE purchase activity were implemented in this decade. There was a greater emphasis in the 1990s on promoting homeownership among first-time homebuyers, low-income families, minority families, and families living in underserved areas. Research under this sub-topic includes, but is not limited to, the following:

(i) What are the general policy implications of the changes in homeownership rates in the decade 1990–2000 and specific implications arising from the pattern of changes across regions, locations, income groups, racial and ethnic groups, groups such as the elderly and the disabled, and household types?

(ii) Are there significant differences in the homeownership rates of recent immigrant groups compared with non-immigrants? What is the pattern of homeownership rate changes for particular immigrant groups? What factors influence the greater likelihood of homeownership among certain recent immigrant groups compared with other recent immigrant groups?

(iii) What factors are responsible for the changes in homeownership rates

experienced between 1990 and 2000? What is the relative importance of different factors, such as demographic factors (age composition and household composition of the population, cultural background, etc.); economic factors (income and wealth, interest rates, house prices and their appreciation); and public policy factors, in determining the changes in homeownership rates?

(iv) What changes were seen in the home value of owner-occupied homes over 1990–2000 (or some similar recent period)? What patterns may be discerned from the changes in home value? Was there greater home value appreciation in certain regions and locations? Did home value changes vary by the minority status of owner-occupants or the minority composition of the tract? Did these results hold after certain relevant factors were controlled for?

(v) How have recent changes in house prices (as measured by repeat sales and other house price indexes) affected the affordability of homeownership, in the nation as a whole, in particular regions and metropolitan areas, and for particular groups such as minorities and immigrants?

(vi) What have been the changes in homeownership in rural areas over the decade, 1990–2000? What have been the changes in home values in rural areas over 1990–2000? What factors explain these changes?

(vii) How has the geography of homeownership changed between 1990 and 2000? Has there been greater suburbanization of homeownership over this period? What was the nature of homeownership gains in our inner cities in terms of the types of homes owned, home values, and income and racial/ethnic characteristics of homeowners?

(viii) Did minority homeowners live in more segregated or less segregated neighborhoods in 2000 than in 1990? How has the degree of integration changed over this period?

Many of these research topics could be addressed using the 1990 and 2000 Census data (short and long forms).[6] While homeownership data are available in the short form data, home value is available only in the long form data. Longer-term comparisons may be made using data from the Censuses before 1990. The Census data may be supplemented with other databases such as the Home Mortgage Disclosure Act (HMDA) data, the American Housing Survey data (including the geocoded version of that database), or other national or local databases. Tract-level analyses may be conducted using these multiple databases. In addition, there are several available measures of house prices and their change that could be used for this analysis (*e.g.*, NAR median house price series, Freddie Mac's repeat sales index, AHS and Census home value information).

(b) *Sustaining Homeownership and Wealth-Accumulation for Low- and Moderate-Income and Minority Families.*[7] While increasing numbers of low- and moderate-income and minority families have achieved the American Dream of homeownership, sustaining the Dream has sometimes presented enormous challenges. The difficulty in making mortgage, insurance, tax and utility payments on time has put many households on the brink of foreclosure or other hardship. Many benefits of homeownership such as gains from price appreciation accrue only after a certain period of sustained homeownership. Thus, ensuring that new homeowners can sustain their homeownership is integral to realizing the American Dream of homeownership as a public policy goal. Even with sustained homeownership, the wealth accumulated in home equity can be dissipated through refinances that overtap equity. In recent times, many households have engaged in such refinances, and often repeatedly. Low-income and elderly households are particularly affected by such transactions. Refinance counseling to educate homeowners of the possibility of erosion in accumulated wealth in the home through refinances is seen as necessary. Research related to sustaining homeownership for low- and moderate-income and minority families includes, but is not limited to, the following:

(i) What has been the recent experience of low- and moderate-income and minority households with respect to sustained homeownership? How many low- and moderate-income and minority households have sustained homeownership for several years?

(ii) Have low- and moderate-income and minority families built assets (wealth) through homeownership? Have refinances resulted in erosion of accumulated housing wealth? What has been the level of appreciation in the values of the homes that low- and moderate-income and minority households have owned for different time horizons (but at least eight years)? How is the home value appreciation distributed across different locations (*e.g.*, regional, urban versus suburban, neighborhoods) and population groups (*e.g.*, different racial groups and their neighborhoods)? What are the policy implications of these developments?

(iii) What factors can be identified as being associated with sustained homeownership among low- and moderate-income and minority families? What is the relative importance of the socio-economic characteristics of these families, the role of institutions (such as special mortgage lending programs and homeownership and refinance counseling programs), and the state of the economy (local and national) in helping sustain homeownership among low- and moderate-income and minority families?

(iv) How many low- and moderate-income and minority households failed to sustain homeownership in spite of having wanted to remain homeowners? What were the causes of failure to sustain homeownership? Can failure to sustain homeownership be reliably predicted using available data sets?

(v) What housing adjustments and non-housing adjustments have homeowners, on the brink of losing their homes, made in order to sustain homeownership? Has housing counseling made a difference?

(vi) Are difficulties with sustaining homeownership associated more with certain types of mortgages? If so, are mortgage characteristics responsible for the difficulties; or are the characteristics of the households (who are more likely to use such mortgages), their housing units, or neighborhoods, responsible?

(vii) What role have non-profit organizations, such as Community Development Corporations (CDCs), faith-based organizations and HUD-approved counseling agencies[8] played in helping sustain homeownership? What types of programs of these institutions (such as financial counseling, job training, providing micro-finance and assistance with renovations) have been most effective in helping sustain homeownership?

Longitudinal panel data, such as the AHS (panel of non-mover sample), Survey of Income and Program Participation (SIPP), Panel Study of Income Dynamics (PSID) and the National Longitudinal Surveys (NLS), are examples of databases that could be used to address these topics. Other special purpose databases may also be available. Case studies on

[6] Applicants should take note of changes in minority categorization, metropolitan area specification, etc. that became effective with the 2000 Census.

[7] ''Families'' and ''households'' are also used interchangeably here.

[8] HUD-approved housing counseling agencies are listed on the Internet at *http://www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm.*

homeownership experiences may be used where appropriate.

(c) *Barriers to Homeownership.* Aspiration for homeownership is widespread among American families who are not yet owners. Many such families perceive barriers that prevent them from becoming homeowners. Financial barriers, including down payment and credit constraints, are faced by many households. Other barriers to homeownership include discrimination and information barriers. Studying the nature and significance of these barriers is a first step towards designing policies to remove, minimize, or overcome these barriers. Research on barriers to homeownership includes, but is not limited to, the following:

(i) What are the main barriers to homeownership that American families currently face?

(ii) What is the relative importance of homeownership barriers such as financial barriers, poor credit history, information barriers, discrimination barriers, lack of availability of affordable housing stock, and lack of personal capacities to manage homeownership? What is the relative importance of these barriers for different population groups such as minorities, the elderly, the disabled, and first-time homebuyers?

(iii) To what extent is a downpayment constraint a barrier to homeownership? What are the common sources of downpayment for American homebuyers? Is homeownership for persons below a certain age related to parental wealth? What roles do family gifts and gifts from others play in opening up homeownership opportunities for young, low-income, and minority families?

(iv) Are homeownership rates among minority groups in particular locations related to some measure of the degree of discrimination that the minority groups face at those locations? Researchers may use long-range panel data like the PSID to address some of these questions. Researchers may also use the Survey of Consumer Finances (SCF), AHS, HMDA data, and other databases.

(v) To what extent do housing supply constraints affect homeownership? For example, do zoning or other types of regulations that restrain housing supply tend to create barriers to homeownership through their effects on housing prices? Are there barriers and supply constraints specifically in underserved neighborhoods that lessen the impacts of targeted affordable housing programs?

(d) *Promoting Homeownership.* There are a number of programs and policies aimed at promoting homeownership in the U.S. Some of these directly address the barriers to homeownership mentioned above. The mortgage finance industry clearly has a vital role to play in promoting homeownership. The role of secondary mortgage market institutions, including the GSEs, in promoting homeownership is of critical interest. FHA has played a major role in the first-time homebuyer market. It is important to study the role played by these institutions in the past and present, as well as their potential role in promoting homeownership in the future. Many first-time homebuyers with low-income, as well as other buyers, have benefited from the efforts of non-profit organizations such as Community Development Corporations (CDCs) and faith-based organizations. The efforts of these institutions include promoting innovative homeownership programs, such as sweat-equity programs, rent-to-own programs and co-operative forms of ownership, and providing micro-finance and homeownership counseling to households. HUD has worked with non-profit organizations in promoting homeownership through a number of its programs, including the Self-Help Housing Opportunity Program (SHOP). HUD's Homeownership Voucher Program specifically addresses the downpayment constraint that low-income households face. Research related to promoting homeownership includes, but is not limited to, the following:

(i) What has been the role of secondary mortgage market institutions in promoting homeownership? What role have the GSEs (including Fannie Mae, Freddie Mac, Federal Home Loan Banks), and the Federal Housing Administration played in promoting homeownership? Has the introduction of quantitative housing goals for Fannie Mae and Freddie Mac in 1993 directly increased homeownership among low- and moderate-income households and among households in underserved areas?[9]

(ii) How has the purchase activity of Fannie Mae and Freddie Mac with respect to mortgages obtained by low-income, minority or first-time homebuyers changed over the recent years? Can these changes be seen as being beneficial to the promotion of homeownership among these groups?

(iii) What is the evidence on the effectiveness of pre- and post-purchase homeownership counseling programs of HUD-approved counseling agencies, and programs sponsored by FHA, the GSEs and other organizations? Does homeownership counseling adequately address homeowners' decisions to refinance?

(iv) What is the role of manufactured housing in promoting homeownership through providing affordable housing? Are first-time homebuyers, low-income households, and minority households more likely to achieve homeownership through purchasing manufactured housing? What are the barriers (such as financial, technological, informational and attitudinal) to homeowners achieving homeownership through buying manufactured homes?

(v) What has been the role of non-profits, Community Development Corporations (CDCs) and faith-based organizations in promoting homeownership? What types of programs of these institutions have been most effective in increasing homeownership? What constraints do these institutions face in promoting homeownership in their communities? What is the scope for HUD programs (existing and new) to help overcome some of these constraints?

Researchers may use the Fannie Mae and Freddie Mac Public Use Data Base (PUDB), HMDA data, case studies, AHS, and other databases in addressing these research areas.

(2) *Studies on Affordable Lending.*

(a) *Studies on Barriers to Credit Access.* Barriers to credit access include limited savings to make a downpayment, insufficient income to afford the requisite monthly payments, high debt burdens, and an inadequately documented or poor credit history. In some or many cases, obtaining credit to purchase a home may not be realistic, and such families may need to rent for a time to build their savings, increase their incomes, reduce their debts, and establish a satisfactory credit history. However, in many other cases, credit may be obtainable if lenders adopt more flexible underwriting guidelines and devote additional time to reviewing applications that do not qualify under the automated underwriting programs commonly in use in today's mortgage market.

An additional barrier to obtaining credit is the fear and uncertainty about the buying process and the risks of ownership. To overcome this, a number of programs have been developed to enhance education about the credit process in recent years, including Freddie Mac's ''Don't Borrow Trouble'' campaign. Also, despite progress in recent years, there is evidence that discrimination in mortgage lending

[9] The Urban Institute has recently completed a report for HUD, ''An Analysis of the Effects of the GSE Affordable Goals on Low- and Moderate-Income Families.'' The study is a significant first step in addressing this issue.

continues to exist.[10] Disparities in treatment between borrowers of different races and neighborhoods of different racial makeup have been well documented.

HUD seeks information on these various barriers to credit access and feasible steps that might be taken to improve such access among minorities and other groups that have traditionally had difficulty in obtaining credit. Study topics include, but are not limited to, the following:

(i) The effectiveness of credit education programs established by various participants in the mortgage process in recent years.

(ii) The nature and adequacy of lender reviews of mortgage applications that don't qualify for approval under automated underwriting.

(iii) The effects on savings for down payments of various policy initiatives in recent years, such as Individual Development Accounts (IDAs), under which participants' savings in restricted accounts are matched by outside sources, and under which these matching funds can only be withdrawn for program-specified purposes, such as to put a down payment on a home.

(b) *Impacts of Broad Initiatives to Promote Affordable Lending.* HUD is interested in quantitative studies of the impacts of broad initiatives to promote affordable lending. Data sources for such studies are listed above in section III (A)(4), but other databases may also yield useful insights.

These studies could utilize econometric techniques to evaluate these questions. An example of this type of study is a recent report prepared for HUD by the Urban Institute. This report, authored by Brent Ambrose, Thomas Thibodeau, and Ken Temkin, is titled *An Analysis of the Effects of the GSE Affordable Goals on Low- and Moderate-Income Families.* The report presented several theoretical models and developed empirical analyses relating to the relationships among GSE market shares and interest rates, financing for target groups, and homeownership.

Study topics could include, but are not limited to, the following:

(i) Factors accounting for changes in GSE market shares over time.

(ii) Effects of HUD's GSE affordable housing goals on homeownership rates for underserved groups and areas targeted by the goals.

(iii) Relationship between GSE market share in specific metropolitan areas and the homeownership rate for targeted groups in those areas.

(c) *Evaluation of Specific Affordable Lending Programs.* In addition to the quantitative studies outlined in the previous section, HUD seeks information on the effects, costs, and benefits of various affordable lending programs developed in the 1990s. Programs that could be analyzed include, but are not limited to, the following:

(i) Freddie Mac's affordable lending programs. Information on these programs is available from Freddie Mac's Web site and from its Annual Housing Activity Reports (AHARs) submitted to HUD.

(ii) Fannie Mae's affordable lending programs. With respect to Fannie Mae, information is available on Fannie Mae's Web site and from its AHARs submitted to HUD.

(iii) Programs of primary mortgage market lenders.

(iv) Programs of primary mortgage market insurers, including private insurers and the Federal Housing Administration (FHA).

(d) *Studies on Down Payments.* Several studies have suggested that the greatest barrier to affordable lending is not the inability to make monthly mortgage payments; rather it is the lack of sufficient resources to make the initial down payment. While FHA has traditionally been the main source of low-downpayment loans for first-time homebuyers, data suggest that conventional lenders increased their low-downpayment lending during the latter half of the 1990s. Fannie Mae and Freddie Mac began offering less-than-five-percent down payment programs during that period. There has been little recent research on the determinants of down payments and on the characteristics of conventional low-downpayment loans originated during the mid-to-late 1990s. Research is particularly needed on the relationship between the new conventional programs and first-time homeownership. Are these conventional and GSE low-downpayment programs providing an avenue for cash-constrained families to obtain first-time homeownership, along the same lines that FHA has been doing? Topics, issues, and questions that could be analyzed include:

(i) Market sectors (*e.g.*, FHA, depositories, the GSEs) that provide substantial numbers of low-downpayment mortgages for low-income and minority families and for first-time homebuyers.

(ii) Characteristics that differentiate between low-income and minority borrowers who are able to make substantial down payments and those who are not able to do so.

(iii) The GSEs' role in the low-downpayment mortgage market. Do their low-downpayment loans go to low-income and minority homebuyers? To first-time homebuyers?

(iv) Comparisons of the down payment characteristics of mortgages originated in the entire primary conventional mortgage market and mortgages purchased by the GSEs.

(v) In order for HUD to define the GSE housing goals in precise terms and set the goals at specific levels, HUD is seeking research that will determine whether the goals affect supply in the market. Specifically, HUD is interested in a model that can provide quantitative estimates of the impact of setting the goals at various levels on the financial condition of the GSEs and on targeted outcomes.

*IV. Cooperative Agreement Structure; Publication of Studies*

The awards will be structured as cooperative agreements, in order to provide latitude to researchers to proceed independently, but with opportunity for HUD to provide comments at appropriate points in the research. As detailed below, HUD's participation in the research will include review and comment on the detailed study design, review and comment on the draft final report, and organizing and participating in a seminar on the research. If you believe that a greater extent of HUD involvement in your project would be advantageous for the successful accomplishment of your research objectives, please include in your project description/narrative a discussion of the desired HUD resources and the rationale. (This is item 6 in the list of application items provided in section VI.A, below.) Formal commitments regarding this aspect of the cooperative agreement would then become a matter for negotiation prior to award.

The technical study plan portion of your application (*see* item 3 in Section VI(A)(5) below) must include provisions for the following work steps to be performed by you and by HUD:

(a) You must submit a detailed study design, comprising identified research issue(s), a technical proposal, and methodological approach. This will be due no later than six weeks from the

[10] Recent studies include *What We Know About Mortgage Lending Discrimination in America*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research, September 1999, and *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions*, report prepared by The Urban Institute for the U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, April 2002.

date of award, unless you indicate a specific rationale for a different schedule. HUD will provide comments to you on the study design.

(b) You must submit a draft report to HUD no later than twenty (20) weeks prior to the scheduled ending date of the project. HUD will provide comments on the draft report, which may include comments of peer reviewers engaged by HUD.

(c) Travel to Washington (or another location, as mutually agreed) to present the study, at a time to be arranged with HUD representatives, subsequent to submission of the draft final report. Your project budget must include provision for this.

(d) You must submit a final report taking account of the comments.

A cost-reimbursement award based on the negotiated budget is anticipated.

A payment schedule based on the completion of project milestones will be established in negotiation. An amount equal to 20 percent of the total amount of the cooperative agreement will be withheld and paid by HUD only after the final project report has been received and accepted by HUD.

The terms and conditions of the cooperative agreement will include restrictions against release of work products, quotation or paraphrasing from work products, or disclosures of interim findings prior to 60 days after HUD acceptance of your final report except with HUD approval. Thereafter, recipients are free to publish without HUD approval. The present provisions of OMB-Circular A–110, and HUD regulations at 24 CFR part 84 subpart C shall govern the right to intellectual or intangible property developed as a result of a recipient's performance under a cooperative agreement.

*V. Program Requirements.*

(A) Threshold Requirements.

(1) *Eligible Applicants.* Academic and not-for-profit institutions located in the U.S., state and local governments, and federally recognized Indian tribes are eligible to apply under this NOFA. For-profit firms also are eligible; however, they are not allowed to earn a fee (*i.e.*, no profit can be made from the project). Federal agencies and federal employees are not eligible to submit applications.

(2) *Compliance with Fair Housing and Civil Rights Laws.*

(a) With the exception of federally recognized Indian tribes and their instrumentalities, all applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the non-discrimination provisions enumerated at 24 CFR 1003.601, as applicable.

(b) If you, the applicant:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or,

(iii) Have received a letter of non-compliance findings under title VI, section 504, or section 109, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in this NOFA, then you may not apply for assistance under this NOFA. HUD will not rate and rank your application. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(3) *Conducting Business In Accordance With Core Values and Ethical Standards.* Entities subject to 24 CFR parts 84 and 85 (most non-profit organizations and state, local and tribal governments or government agencies or instrumentalities that receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (*see* §§ 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and, outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into a cooperative agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct.

(B) *Program Requirements.*

(1) *Number of Proposals and Topics.* A particular author or group of co-authors may submit separate research proposals on more than one topic, but no more than one award will be made to any one such author or group of co-authors.

You may address more than one of the technical study topic areas within your proposal or submit separate applications for different topic areas. Projects need not address all of the objectives within a given topic area. While you will not be penalized for not addressing all of the specific objectives for a given topic area, if two applications for technical study in a given topic have equal scores, HUD will select the applicant whose project addresses the most objectives.

(2) *Period of Performance.* The period of performance may not exceed 18 months from the time of award.

(3) *Conflict of Interest.* You must include information in your proposal concerning any past and current relationships that you and any other individuals, contractors, subcontractors or consultants proposed to be involved in the work may have with Fannie Mae or Freddie Mac. Substantial conflict of interest may be a basis for HUD disapproval of a proposed investigator's involvement.

If your study bears in any way on the role or activities of financial institutions, you will be required upon the completion of your work to provide to HUD a succinct statement summarizing any past or current relationships between project personnel (either individually or through their institutions), and Fannie Mae, or Freddie Mac. In any subsequent public release of the research by the Office of Policy Development and Research, either through formal publication or otherwise, this statement will be included, to inform readers of the nature and extent of any such relationships.

(4) *Existing Resources.* HUD technical studies funds may not replace existing resources dedicated to any ongoing project.

(5) *Protection of Human Subjects.* Human research subjects must be protected from research risks in conformance with Federal Policy for the Protection of Human Subjects, codified by HUD at 24 CFR part 60.

(6) *Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses.* HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD cooperative agreement funds. Too often, these businesses still experience difficulty accessing information and successfully bidding on federal contracts. State, local, and tribal governments are required by 24 CFR 85.36(e), and non-profit recipients of assistance by 24 CFR 84.44(b), to take all necessary affirmative steps in contracting for purchase of goods or

services to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(7) *Additional Non-Discrimination Requirements.* You, the applicant, and your subrecipients must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*) and title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*)

(8) *Prohibition Against Lobbying Activities.* Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65, approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for federal contracts and grants from using appropriated funds to attempt to influence federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of non-appropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65, approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives, and file reports concerning their lobbying activities.

*VI. Application Submission Requirements*

(A) *Applicant Information.*

Your application must contain the items listed in this section VI, as follows:

(1) A transmittal letter (limited to one page) which identifies the purpose for which the technical study program funds are requested, the dollar amount requested, and the applicant or applicants submitting the application. If two or more organizations are working together on the project, a primary applicant must be designated.

(2) Checklist and submission table of contents (*see* Appendix A).

(3) Name of primary applicant and any sub-recipients (such as consortium associates, partners, subcontractors, joint venture participants, or others contributing resources to your project), with contact information (*i.e.*, name, mailing address, and telephone number of principal contact person) for each.

(4) An abstract (limited to two pages) containing the following information: The project title, the names and affiliations of all investigators, and a summary of the research problem and study design as described in the project narrative.

(5) A project narrative (limited to a total of 25 pages) that discusses your qualifications and your study plan and addresses the following topics, which correspond to the rating factors for award of funding as stated in section VII(D), below. The narrative statement must be organized in sections numbered in accordance with this outline:

1. Applicant and organizational qualifications, including qualifications of the principal investigator and key personnel, experience in managing similar projects, and past performance in managing project funds. *See* the discussion of Rating Factor 1 in section VII(D).

2. The problem to be addressed. *See* Rating Factor 2.

3. Technical study plan, including study design, quality assurance mechanisms, and project management plan. *See* Rating Factor 3; *also see* section IV, above.

4. Statement of non-HUD resources to be applied, if any. *See* Rating Factor 4.

5. Statement on coordination, self-sufficiency, and sustainability of your work. *See* Rating Factor 5. Any pages in excess of the 25-page limit will not be read.

(6) Discussion of desired HUD resources, if applicable. *See* section IV.

(7) Conflict of interest disclosure. *See* section V(B)(3).

(8) You may provide attachments, appendices, bibliography, or other relevant materials that support your project narrative, but these must not exceed 20 pages in the aggregate. Any pages in excess of this limit will not be read.

(9) The resumes of the principal investigator and other key personnel. Resumes shall not exceed three pages each and are limited to information that is relevant in assessing the qualifications of key personnel to conduct and/or manage the proposed technical studies.

(10) Indirect Cost Rate Agreement, if available. Applicants that have established indirect cost rate agreements shall provide a copy of the agreement from their cognizant Federal agency. The cognizant agency is the Federal agency responsible for negotiating.

(B) *Standard Forms, Certifications and Assurances.*

You, the applicant, are required to submit signed copies of the following forms, certifications, and assurances:

(i) Application for Federal Assistance (HUD–424);

(ii) Applicant Assurances and Certifications (HUD–424–B);

(iii) Detailed Budget (HUD–424–CB);

(iv) Detailed Budget Worksheet (HUD–424–CBW);

Note that the thoroughness, clarity, and coherence of the budget information that you provide on the Detailed Budget Worksheet will be evaluated under Rating Factor 3, item 4. You must thoroughly document and justify all budget categories and costs and all major tasks, for yourself and any sub-recipients contributing resources to the project. Your budget should include the cost of travel to Washington for at least one investigator to meet with HUD representatives or participate in a research seminar or symposium.

(v) If required, the Disclosure Form Regarding Lobbying (SF–LLL). *See* the first paragraph under ''certifications'' on page 2 of form HUD–424. *See also* section V(B)(8) above;

(vi) Disclosure/Update Report (HUD–2880);

(vii) Acknowledgment of Application Receipt (HUD–2993); and

(viii) Client Comments and Suggestions (HUD 2994).

Copies of these standard forms, with instructions as applicable, are appended to this NOFA.

*VII. Application Selection Process*

(A) *Program Threshold Requirements.* HUD will review your application to determine whether it meets all of the program threshold requirements described in section V(A) above. Only applications that meet all of the threshold requirements will be eligible to be rated and ranked.

(B) *Rating.* Applications that meet all of the threshold requirements will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors described below. Your application must receive a total score of at least 70 points to remain in consideration for funding.

(C) *Ranking and Selection.* Selection of award recipients will be based on the ranking of aggregate scores, within the limits of funding availability. Awards may be made to two or more recipients proposing work on a particular topic, if deemed to be in the best interests of the government. HUD reserves the right to

select applications out of rank order to achieve balance among the topics selected for funding.

(D) *Rating Factors.* The factors for rating and ranking applicants, and maximum points for each factor, are provided below. The maximum number of points to be awarded is 100.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (30 Points)

Points will be awarded under the following three sub-factors, based on the extent to which your proposal indicates that you have the ability and organizational resources necessary to implement successfully your proposed activities in a timely manner. The rating of you, the ''applicant,'' will include any sub-recipients that will contribute resources to the project. In rating this factor, HUD will consider and award points based on the extent to which your application demonstrates:

(1) *That the principal investigator and key personnel are capable and qualified to accomplish the proposed research, based on their education/training and previous completed research.* (15 points.) Qualifications to carry out the proposed study will be evaluated based on the academic background of personnel, relevant publications, and recent (within the past 10 years) research experience relevant to the type of work proposed. Publications and research experience are considered relevant if they required the acquisition and use of knowledge and skills that can be applied in the planning and execution of the technical study that is proposed.

(2) *That the project manager(s) have demonstrated ability to manage this research, based on past performance in managing similar projects.* (10 points.) Points will be awarded based on demonstrated ability to successfully manage your study in such areas as personnel management, project management, data management, quality control, community study involvement (if applicable), and report writing, as well as overall success in project completion (*i.e.,* projects completed on time and within budget). You should also demonstrate that your project would have adequate administrative support, including clerical and specialized support in areas such as accounting and equipment maintenance, as relevant.

(3) *That the primary applicant and any sub-recipients are capable of managing project funds, based on past performance.* (5 points.) Points will be awarded based on the extent of demonstrated ability to account for funds appropriately as well as on timely use of funds received either from HUD or from other Federal, state, or local programs, or private programs. HUD may consider information at hand or available from public sources such as, but not limited to, newspapers, Inspector General or Government Accounting Office Reports or Findings, and/or hotline complaints that have been proven to have merit.

Rating Factor 2: Need/Extent of the Problem (10 Points)

Points will be awarded based on the extent to which your proposal establishes that your proposed research will address documented problems, target areas or target groups. In responding to this factor, you should document in detail how your project would make a significant contribution towards achieving some or all of HUD's stated goals and objectives for one or more of the topic areas described in section III (A).

Rating Factor 3: Soundness of Technical Study Approach (50 Points)

Points will be awarded based on the quality of the technical study plan portion of your application, under the following four sub-factors. Specific components that will be evaluated include the following:

(1) *Soundness of the study design.* (30 points.) The thoroughness and feasibility of your project description/study design, and the extent to which it reflects a comprehensive understanding of the relevant technical literature. It should clearly describe how your study builds upon the current state of knowledge for your focus area. If possible, your study should be designed to address testable hypotheses, which are clearly stated. Your study design should be statistically based, with sufficient data to provide an adequate test of your stated hypotheses. The study design should be presented as a logical sequence of steps or phases, with individual activities or tasks described for each. You should identify any important ''decision points'' in your study plan, and you should discuss plans for data management, analysis and archiving.

(2) *Quality assurance mechanisms.* (10 points.) The adequacy of quality assurance mechanisms that will be integrated into your project design to ensure the validity and quality of the results. Areas to be addressed include acceptance criteria for data quality, procedures for selection of samples/sample sites, sample handling, measurement and analysis, and any standard/nonstandard quality assurance/control procedures to be followed. Documents (*e.g.,* government reports, peer-reviewed academic literature) that provide the basis for your quality assurance mechanisms should be cited.

(3) *Project management plan.* (8 points.) The extent to which your schedule for the completion of major activities, tasks and deliverables, and your budget, confirm that there will be adequate resources (*e.g.,* personnel, financial) to carry out your study design successfully within the proposed time frame, taking account of timing requirements stated in section IV, above.

(4) *Budget proposal.* (2 Points) Two points will be awarded if your budget proposal on the HUD–424CB thoroughly estimates all applicable direct and indirect costs and is presented in a clear and coherent format as provided in section VI (B). One point, or no point, will be awarded if your budget proposal is deficient in these regards, based on the degree of deficiency.

Rating Factor 4: Leveraging of Resources (5 Points)

You are encouraged to demonstrate that the effectiveness of HUD's funds will be increased by securing other public and/or private resources or by structuring the project in a cost-effective manner, such as integrating the project into an existing study. Resources may include funding or in-kind contributions (such as services, facilities or equipment) allocated to the purpose(s) of your project. Staff and in-kind contributions should be given a monetary value. Larger commitments of this kind will be awarded more points under this rating factor.

You should provide evidence of leveraging/partnerships by attaching to your application letters of firm commitment, memoranda of understanding, or agreements to participate from those entities identified as partners in the project efforts. Each letter of commitment, memorandum of understanding, or agreement to participate must include the organization's name, proposed level of commitment (with monetary value) and responsibilities as they relate to specific activities or tasks of your proposed program. The commitment must also be signed by an official of the organization legally able to make commitments on behalf of the organization.

Rating Factor 5: Coordination, Self-Sufficiency and Sustainability (5 Points)

(1) The extent to which you have coordinated your activities with other organizations that have been or are in

the process of conducting similar or related work.

(2) Evidence that your proposed study builds upon the existing body of related work and it does not significantly duplicate work that is currently being conducted, or has been conducted, by other organizations (to the extent that this can be ascertained).

(3) The extent to which your project will help generate practical solutions that can be implemented on the local or national level for increasing homeownership and/or improving housing affordability for low- and moderate-income families, minority families, and families in underserved geographical areas.

(E) *Adjustments to Funding.*

(1) HUD reserves the right to fund less than the full amount requested in your application to ensure the fair distribution of the funds and that the purposes of this program are met.

(2) HUD will not fund any portion of your application that is not eligible for funding under specific program statutory or regulatory requirements; does not meet the requirements of this NOFA; or that may be duplicative of other funded programs or activities from previous years' awards or other selected applicants. Only the eligible portions of your application (including non-duplicative portions) may be funded.

(3) Purchase or lease of equipment having a per unit cost in excess of $5,000 will not be funded unless prior written approval is obtained from HUD.

(4) If funds remain after funding the highest-ranking applications, HUD may fund all or part of the next highest-ranking application in a given program. If you, the applicant, turn down an award offer, HUD will make an offer of funding to the next highest-ranking application. If funds remain after all selections have been made, remaining funds may be available for other competitions for each program where there is a balance of funds.

(5) In the event HUD commits an error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this NOFA, HUD may select that applicant when sufficient funds become available.

(F) *Audit.*

Grantees/applicants that expend $300,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with OMB Circular A–133. Grantees/applicants shall ensure that their most recent completed audit has been submitted to the Federal Audit Clearinghouse for review by HUD (refer to *harvester.census.gov/sac/*). Grantees that do not have such an audit or are not subject to OMB Circular A–133 will be asked to provide a copy of their organization's most recent audit or other evidence that financial controls are in place before an award can be finalized.

*VIII. Corrections, Debriefing*

(A) *Corrections to Deficient Applications.* After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not unreasonably to exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile (FAX) or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

(B) *Applicant Debriefing.* Beginning not less than 30 days after the awards for assistance are announced in the **Federal Register**, and for at least 120 days after awards for assistance are announced, HUD will provide any requesting applicant with a debriefing on their application. All requests for debriefing must be made by the principal investigator for the proposed study or by the authorized official whose signature appears on the HUD–424 or his or her successor in office. Submit your request to Mr. Patrick Tewey, who may be reached at (202) 702–0614, extension 4098 (this is not a toll-free number). Information provided to you during your debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

*IX. Findings and Certifications*

(A) *Federalism Impact.* Executive Order 13132 (captioned ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

(B) *Accountability in the Provision of HUD Assistance.*

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(2) *Disclosures.* HUD will make available for public inspection for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three

years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; and/or,

(ii) Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(C) *Section 103 HUD Reform Act.* HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815 (this is not a toll-free number). For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(D) *Paperwork Reduction Act Statement.* The information collection requirements in this NOFA have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB control number is 2528–0228. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(E) *Environmental Requirements.* This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. In accordance with 24 CFR 50.19(b)(1) of HUD regulations, activities under this program are categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and are not subject to environmental review under the related laws and authorities.

(F) *Catalog of Federal Domestic Assistance Numbers.* The Federal Domestic Assistance number for this program is 14.506.

*X. Authority*

These cooperative agreements are authorized under sections 501 and 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 *et seq.*).

Dated: May 9, 2003.

**Christopher Lord,**

*Deputy Assistant Secretary for Policy Development and Research.*

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# APPENDIX A

## CHECKLIST AND SUBMISSION TABLE OF CONTENTS

## RESEARCH STUDIES ON HOMEOWNERSHIP AND AFFORDABLE LENDING

The following checklist is provided to ensure you have submitted all required items to receive consideration for funding. You must assemble the application in the order shown below and note the corresponding page number where the response is located. **You must include this checklist and submission table of contents with the proposal.**

| | page number |
|---|---|
| [] Transmittal Letter (limited to one page) | *cover page* |
| [] Checklist and submission table of contents (i.e., this page) | _____ |
| [] Name of primary applicant and any sub-recipients, with contact information for each | _____ |
| [] Abstract (limited to two pages) | _____ |
| Project narrative (limited to 25 pages total) | |
| [] 1. Applicant and organizational qualifications | _____ |
| [] 2. The problem to be addressed | _____ |
| [] 3. Technical study plan (study design, quality assurance mechanisms, and project management plan) | _____ |
| [] 4. Non-HUD resources to be applied (if any) | _____ |
| [] 5. Statement on coordination, self-sufficiency, and sustainability | _____ |
| [] Discussion of desired HUD resources, if applicable | _____ |
| [] Conflict of interest disclosure | _____ |
| [] Attachments, appendices, bibliography, or other relevant materials, if any (limited to 20 pages) | _____ |
| [] Resumes (limited to three pages per individual) | _____ |
| [] Indirect cost rate agreement, if available | _____ |
| [] Application for Federal Assistance (Form HUD-424) | _____ |
| [] Applicant Assurances and Certifications (Form HUD 424-B) | _____ |
| [] Detailed Budget (Form HUD-424-CB) | _____ |
| [] Detailed Budget Worksheet (Form HUD-424-CBW) | _____ |
| [] Disclosure of Lobbying Activities, if required (Standard Form LLL) | _____ |
| [] Disclosure/Update Report (Form HUD-2880) | _____ |
| [] Acknowledgment of Application Receipt (Form HUD-2993) | _____ |
| [] Client Comments and Suggestions (Form HUD-2994) | _____ |

**Application for Federal Assistance**

**U.S. Department of Housing and Urban Development**

OMB Approval No.2501-0017 (exp. 03/31/2005)

1. Type of Submission
☐ Application ☐ Preapplication

| | |
|---|---|
| 2. Date Submitted | 4. HUD Application Number |
| 3. Date and Time Received by HUD | 5. Existing Grant Number |
| | 6. Applicant Identification Number |

| | |
|---|---|
| 7. Applicant's Legal Name | 8. Organizational Unit |
| 9. Address (give city, county, State, and zip code)<br>A. Address:<br>B. City:<br>C. County:<br>D. State:<br>E. Zip Code: | 10. Name,title,telephone number,fax number, and e-mail of the person to be contacted on matters involving this application (including area codes)<br>A. Name:<br>B. Title:<br>C. Phone:<br>D. Fax:<br>E. E-mail: |
| 11. Employer Identification Number (EIN) or SSN | 12. Type of Applicant (enter appropriate letter in box)<br>A. State<br>B. County<br>C. Municipal<br>D. Township<br>E. Interstate<br>F. Intermunicipal<br>G. Special District<br>H. Independent School District<br>I. University or College<br>J. Indian Tribe<br>K. Tribally Designated Housing Entity (TDHE)<br>L. Individual<br>M. Profit Organization<br>N. Non-profit<br>O. Public Housing Authority<br>P. Other (Specify) |
| 13. Type of Application<br>☐ New ☐ Continuation ☐ Renewal ☐ Revision<br>If Revision, enter appropriate letters in box(es) ☐ ☐<br>A. Increase Amount B. Decrease Amount C. Increase Duration<br>D. Decrease Duration E. Other (Specify) | 14. Name of Federal Agency<br>**U.S. Department of Housing and Urban Development** |
| 15. Catalog of Federal Domestic Assistance (CFDA) Number<br>14 ---<br>Title:<br>Component Title: | 16. Descriptive Title of Applicant's Program |
| 17. Areas affected by Program (boroughs, cities, counties, States, Indian Reservation, etc.) | |

| | | | |
|---|---|---|---|
| 18a. Proposed Program start date | 18b. Proposed Program end date | 19a. Congressional Districts of Applicant | 19b. Congressional Districts of Program |

20. Estimated Funding: **Applicant must complete the Funding Matrix on Page 2.**

21. Is Application subject to review by State Executive Order 12372 Process?
A. Yes ☐ This preapplication/application was made available to the State Executive Order 12372 Process for review on: Date_____
B. No ☐ Program is not covered by E.O. 12372
☐ Program has not been selected by State for review.

22. Is the Applicant delinquent on any Federal debt? ☐ No
☐ Yes If "Yes," explain below or attach an explanation.

Previous versions of HUD-424 and 424-M are obsolete



form **HUD-424** (01/2003)
ref. OMB Circular A-102

## Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which HUD funding is being requested, and complete the certifications.

| Grant Program* | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income | Total |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| **Grand Totals** | | | | | | | | | |

* For FHIPs, show both initiative and component

## Certifications

I certify, to the best of my knowledge and belief, that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

This application incorporates the Assurances and Certifications (HUD-424B) attached to this application or renews and incorporates for the funding you are seeking the Assurances and Certifications currently on file with HUD. To the best of my knowledge and belief, all information in this application is true and correct and constitutes material representation of fact upon which HUD may rely in awarding the agreement.

| 23. Signature of Authorized Official | Name (printed) |
|---|---|
| Title | Date (mm/dd/yyyy) |

## Instructions for the HUD-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This form must be used by applicants requesting funding from the Department of Housing and Urban Development. This application form HUD-424 incorporates the Assurances and Certifications (HUD-424-B). You may either (1) attach the Assurances and Certifications to the application or (2) renew the certifications that you previously made on behalf of your organization and submitted to HUD if the legal name of your organization has not changed and you were the authorized representative who signed the Assurances and Certifications.

### Item Number Instructions

1. Please indicate whether your application is for a formal application submission or a preliminary application (pre-application). HUD does not accept pre-applications for programs funded through the SuperNOFA.
2. Enter the date you are submitting your application to HUD.
3. This box will be completed by HUD. When received by HUD, your application will be stamped:
   (a) with a date; and
   (b) with the time received.
4. Leave Blank. This will be completed by the HUD program office receiving your application. When HUD accepts electronic applications for the grant program you are applying for, this number will be computer generated.
5. If your application is to renew or continue an existing grant, provide the existing grant number. If a new award, please leave blank.
6. Leave blank if you have not been provided a HUD ID number or user number. If you are a Public Housing Authority, enter your HUD issued Public Housing Authority ID number.
7. Enter the legal name of your organization applying for HUD funding.
8. Enter the name of the primary unit in your organization, if applicable, which will be responsible for the program.
9. Enter the complete address of your organization.
10. Enter the name, title, telephone number, fax number, and E-mail of the person to contact on matters related to your application.
11. Enter your organization's Employer Identification Number (EIN) as assigned by the Internal Revenue Service or if you are applying as an individual, your Social Security Number.
12. Choose from the list and enter the appropriate letter in the space provided. You must be an eligible applicant to apply for assistance. You must read the program information requirements to determine if you are a type of applicant that is eligible to apply for assistance under the program.
13. Enter the type of application you are submitting for funding consideration.

Check the appropriate box.

"New" means you are applying for a new grant award.

"Continuation" means you are requesting an extension of an existing award.

"Renewal" means you are requesting funding for renewal of an existing grant. e.g. Supportive Housing Program (SHP) or Shelter + Care grant.

"Revision" means you are submitting a revision prior to the application due date in response to HUD's request for clarification or modification to your initial submission.

14. Pre-filled.
15. Enter the Catalog of Federal Domestic Assistance (CFDA) number and title and, if applicable, component title of the program.
16. Enter a brief description of your program and key activities.
17. Identify the location(s) where your activities will take place. If this is the entire state, enter "Entire State".

18a. Enter the proposed start date.

18b. Enter the proposed end date.

19a. List the Congressional District(s) where your organization is located.

19b. List any Congressional District(s) where your program of activities or project sites will be located.

20. You must complete the funding matrix on page 2 of this form. Enter the following information:

**Grant Program**: The HUD funding program under which you are applying.

**HUD Share**: Please check the program requirements. Enter the amount of HUD funds you are requesting in your application.

**Applicant Match**: Enter the amount of funds or cash equivalent of in-kind contributions you are contributing to your project or program of activities.

**Other Federal Share**: Enter the amount of other Federal funds for your program of activities.

## Instructions for the HUD-424 (Continued)

**State Share**: Enter the amount of funds or cash equivalent of in-kind services the State is providing to your project or program of activities.
**Local/Tribal Share**: Enter the amount of funds or cash equivalent of in-kind services your local/tribal government is providing to your project or program of activities.
**Other**: Enter the amount of other sources of private, non-profit, or other funds or cash equivalent of in-kind services being provided to your project or program of activities.
**Program Income**: Enter the amount of program income you expect to generate over the life of your award.
**Total**: Please total all columns and fill in the amounts.
21. You should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 or check your application kit to determine whether the State Intergovernmental Review Process is required.
22. This question applies to your applicant organization, not the person signing as your organization's authorized representative. Categories of debt include disallowed costs that requires repayment to HUD.
23. To be signed by the authorized representative of your organization. A copy of your governing body's authorization for you to sign this application must be available in your organization's office.

| Applicant Assurances and Certifications | U.S. Department of Housing and Urban Development | OMB Approval No. 2501-0017 (exp. 03/31/2005) |
|---|---|---|

## Instructions for the HUD-424-B Assurances and Certifications

As part of your application for HUD funding, you, as the official authorized to sign on behalf of your organization or an an individual must provide the following assurances and certifications. By signing this form, you are stating that to the best of your knowledge and belief, all assertions are true and correct.

As the duly authorized representative of the applicant, I certify that the applicant [Insert below the Name and title of the Authorized Representative, name of Organization and the date of signature]:

Name:_____, Title:_____.

Organization:_____, Date:_____.

1. Has the legal authority to apply for Federal assistance, has the institutional, managerial and financial capability (including funds to pay the non-Federal share of program costs) to plan, manage and complete the program as described in the application and the governing body has duly authorized the submission of the application, including these assurances and certifications, and authorized me as the official representative of the applicant to act in connection with the application and to provide any additional information as may be required.

2. Will administer the grant in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and implementing regulations (24 CFR Part 1), which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance **OR** if the applicant is a Federally recognized Indian tribe or its tribally designated housing entity, is subject to the Indian Civil Rights Act (25 U.S.C. 1301-1303).

3. Will administer the grant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146 which together provide that no person in the United States shall, on the grounds of disability or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance; except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

4. Will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and the implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin; except an applicant which is an Indian tribe or its instrumentality which is excluded by statute from coverage does not make this certification and further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.

5. Will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) and implementing regulations at 49 CFR Part 24 and 24 CFR 42, Subpart A.

6. Will comply with the environmental requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and related Federal authorities prior to the commitment or expenditure of funds for property acquisition and physical development activities subject to implementing regulations at 24 CFR parts 50 or 58.

7. 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 applicant'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 applicant'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 in 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;

| Applicant Assurances and Certifications (Continued) | U.S. Department of Housing and Urban Development | OMB Approval No. 2501-0017 (exp. 03/31/2005) |
|---|---|---|

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee has worked, unless the Federal agency has designated a central point for the receipt of such notices. 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 paragraph (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 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).

(h). The applicant may insert in the space provided below the site(s) for the performance of work or may provide this information in connection with each application.

(i). Place of Performance (street address, city, county, state, zip code)

8. In accordance with 24 CFR Part 24, 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 proposal, 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; 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 otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the preceding paragraph of this certification; and

(d) Where the applicant is unable to certify to any of the statements in this certification, an explanation shall be attached.

(e) Will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transaction, " provided by the HUD without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

These certifications and assurances are material representations of the fact upon which HUD can rely when awarding a grant. If it is later determined that I, the applicant, knowingly made an erroneous certifications or assurance, I may be subject to criminal prosecution. HUD may also terminate the grant and take other available remedies.

## Grant Application Detailed Budget

(Applicant should duplicate this first page as necessary)

**U.S. Department of Housing and Urban Development**

OMB Approval No. 2501-0017 (exp. 03/31/2005)

| Name of Project/Activity: | Functional Categories (Year 1) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | **Column 1** | **Column 2** | **Column 3** | **Column 4** | **Column 5** | **Column 6** | **Column 7** | **Column 8** | **Column 9** |
| | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income | Total |
| a. Personnel (Direct Labor) | $ | $ | $ | $ | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | | | | | |
| c. Travel | | | | | | | | | |
| d. Equipment (Only Items > $5,000 Depreciated Value) | | | | | | | | | |
| e. Supplies (Only Items with Depreciated Value < $5,000 ) | | | | | | | | | |
| f. Contractual | | | | | | | | | |
| g. Construction | | | | | | | | | |
| 1. Administration and legal expenses | | | | | | | | | |
| 2. Land, structures, rights-of way, appraisals, etc. | | | | | | | | | |
| 3. Relocation expenses and payments | | | | | | | | | |
| 4. Architectural and engineering fees | | | | | | | | | |
| 5. Other architectural and engineering fees | | | | | | | | | |
| 6. Project inspection fees | | | | | | | | | |
| 7. Site work | | | | | | | | | |
| 8. Demolition and removal | | | | | | | | | |
| 9. Construction | | | | | | | | | |
| 10. Equipment | | | | | | | | | |
| 11. Contingencies | | | | | | | | | |
| 12. Miscellaneous | | | | | | | | | |
| h. Other (Direct Costs) | | | | | | | | | |
| i. Subtotal of Direct Costs | | | | | | | | | |
| j. Indirect Costs (% Approved Indirect Cost Rate:___%) | | | | | | | | | |
| **Grand Total (Year 1):** | | | | | | | | | |



form **HUD-424-CB** (2/2003)

## Grant Application Detailed Budget

(Applicant should duplicate this first page as necessary)

**U.S. Department of Housing and Urban Development**

OMB Approval No. 2501-0017 (exp. 03/31/2005)

| Name of Project/Activity: | Functional Categories (Year 2) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | **Column 1** | **Column 2** | **Column 3** | **Column 4** | **Column 5** | **Column 6** | **Column 7** | **Column 8** | **Column 9** |
| | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income | Total |
| a. Personnel (Direct Labor) | $ | $ | $ | $ | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | | | | | |
| c. Travel | | | | | | | | | |
| d. Equipment (Only Items > $5,000 Depreciated Value) | | | | | | | | | |
| e. Supplies (Only Items with Depreciated Value < $5,000 ) | | | | | | | | | |
| f. Contractual | | | | | | | | | |
| g. Construction | | | | | | | | | |
| 1. Administration and legal expenses | | | | | | | | | |
| 2. Land, structures, rights-of way, appraisals, etc. | | | | | | | | | |
| 3. Relocation expenses and payments | | | | | | | | | |
| 4. Architectural and engineering fees | | | | | | | | | |
| 5. Other architectural and engineering fees | | | | | | | | | |
| 6. Project inspection fees | | | | | | | | | |
| 7. Site work | | | | | | | | | |
| 8. Demolition and removal | | | | | | | | | |
| 9. Construction | | | | | | | | | |
| 10. Equipment | | | | | | | | | |
| 11. Contingencies | | | | | | | | | |
| 12. Miscellaneous | | | | | | | | | |
| h. Other (Direct Costs) | | | | | | | | | |
| i. Subtotal of Direct Costs | | | | | | | | | |
| j. Indirect Costs (% Approved Indirect Cost Rate:___%) | | | | | | | | | |
| **Grand Total (Year 2):** | | | | | | | | | |



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## Grant Application Detailed Budget

(Applicant should duplicate this first page as necessary)

**U.S. Department of Housing and Urban Development**

OMB Approval No. 2501-0017 (exp. 03/31/2005)

| | Functional Categories (Year 3) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | **Column 1** | **Column 2** | **Column 3** | **Column 4** | **Column 5** | **Column 6** | **Column 7** | **Column 8** | **Column 9** |
| Name of Project/Activity: | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income | Total |
| a. Personnel (Direct Labor) | $ | $ | $ | $ | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | | | | | |
| c. Travel | | | | | | | | | |
| d. Equipment (Only Items > $5,000 Depreciated Value) | | | | | | | | | |
| e. Supplies (Only Items with Depreciated Value < $5,000 ) | | | | | | | | | |
| f. Contractual | | | | | | | | | |
| g. Construction | | | | | | | | | |
| 1. Administration and legal expenses | | | | | | | | | |
| 2. Land, structures, rights-of way, appraisals, etc. | | | | | | | | | |
| 3. Relocation expenses and payments | | | | | | | | | |
| 4. Architectural and engineering fees | | | | | | | | | |
| 5. Other architectural and engineering fees | | | | | | | | | |
| 6. Project inspection fees | | | | | | | | | |
| 7. Site work | | | | | | | | | |
| 8. Demolition and removal | | | | | | | | | |
| 9. Construction | | | | | | | | | |
| 10. Equipment | | | | | | | | | |
| 11. Contingencies | | | | | | | | | |
| 12. Miscellaneous | | | | | | | | | |
| h. Other (Direct Costs) | | | | | | | | | |
| i. Subtotal of Direct Costs | | | | | | | | | |
| j. Indirect Costs (% Approved Indirect Cost Rate:___%) | | | | | | | | | |
| **Grand Total (Year 3):** | | | | | | | | | |



form **HUD-424-CB** (2/2003)

## Instructions for the HUD Grant Application Detailed Budget Form

Public reporting Burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB Control Number.

### General Instructions

This form is designed so that an application can be made for any of HUD's grant programs. Space is provided for 3 separate program years.

In preparing the budget, adhere to any existing HUD requirements which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, HUD may require budgets to be shown separately by function or activity.

Your budget information should show the entire cost of your proposed program of activities per year. If you are not using funds in any of the line item categories, you should leave the item blank. Pages may be duplicated to show budget data for individual programs, projects or activities.

NOTE: Not all budget categories on this form are eligible for funding under all programs. Please see eligible activities under the specific program for which you are seeking funding.

### Budget Categories

The budget categories identifies how your program funds will be allocated by type of use, e.g., funds going for salaries, travel, contracts, etc. Each of these line items should be broken out under each applicable column.

**Lines a-f**--Show the totals of Lines a to f in each column.

**Lines g.** Show construction related expenses in the appropriate categories below.

**Line g.1.**--Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government.

**Line g.2.**--Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

**Line g.3.**--Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

**Line g.4.**--Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

**Line g.5.**--Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

**Line g.6.**--Enter estimated engineering inspection costs.

**Line g.7.**--Enter the estimated site preparation and restoration which are not included in the basic construction contract.

**Line g.8.**--Enter the estimated costs related to demolition activities.

**Line g.9.**--Enter estimated costs of the construction contract.

**Line g.10.**--Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

**Line g.11.**--Enter any estimated contingency costs.

**Line g.12.**--Enter estimated miscellaneous costs.

**Line h.**--Enter any other direct costs not already addressed above.

**Line i.**--Calculate the totals of all applicable columns to determine the Subtotal of Direct Costs.

**Line j.**--Indicate the approved Indirect Cost Rate (if any) and calculate the indirect cost in accordance with the terms of your approved indirect cost rate and enter the resulting amount.

**Grand Total (by Year)**--Enter the sum of lines i. and j. under column 9 for each year.

For each budget category (personnel, fringe benefits, travel, etc) you should identify the amount of funding you plan on using in your grant program. You should complete each column as follows:

**Column 1** - Identify the amount of funds that you will need from the HUD grant program for which you are seeking funding.

**Column 2** - Identify any matching funds that you are required to include in your proposed program in order to be eligible for assistance.

**Column 3** - Identify any other HUD funds that you will be adding to this program either through your formula or competitive grant programs.

**Column 4** - Identify any other Federal funds that you will be adding to this program either through your formula or competitive grant programs.

**Column 5** - Identify any State funds that you will be adding to this program.

**Column 6** - Identify any Local or Tribal Government funds that you will be adding to this program.

**Column 7** - Identify any additional funds not previously identified in Columns 1 - 6, that you intend to use for your proposed program.

**Column 8** - Identify any program income that you expect to generate under this program.

**Column 9** - Add columns 1 - 8 across and place the total in Column 9.

OMB Approval No. 2501-0017

# Grant Application Detailed Budget Worksheet

(Exp. 03/31/2005)

Name and Address of Applicant:

**Category** — **Detailed Description of Budget (for full grant period)**

| **1. Personnel (Direct Labor)** | **Estimated Hours** | **Rate per Hour** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Position or Individual | | | | | | | | | | | |
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| | | | | | | | | | | | |
| Total Direct Labor Cost | | | | | | | | | | | |

| **2. Fringe Benefits** | **Rate (%)** | **Base** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
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| | | | | | | | | | | | |
| Total Fringe Benefits Cost | | | | | | | | | | | |

**3. Travel**

| **3a. Transportation - Local Private Vehicle** | **Mileage** | **Rate per Mile** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| Subtotal - Trans - Local Private Vehicle | | | | | | | | | | | |



form **HUD-424-CBW** (2/2003)

# Grant Application Detailed Budget Worksheet

**Detailed Description of Budget**

| 3b. Transportation - Airfare (show destination) | Trips | Fare | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| Subtotal - Transportation - Airfare | | | | | | | | | | | |

| 3c. Transportation - Other | Quantity | Unit Cost | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| Subtotal - Transportation - Other | | | | | | | | | | | |

| 3d. Per Diem or Subsistence (indicate location) | Days | Rate per Day | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Subtotal - Per Diem or Subsistence | | | | | | | | | | | |
| **Total Travel Cost** | | | | | | | | | | | |

| 4. Equipment (Only items over $5,000 Depreciated value) | Quantity | Unit Cost | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| **Total Equipment Cost** | | | | | | | | | | | |



form **HUD-424-CBW** (2/2003)

# Grant Application Detailed Budget Worksheet

**Detailed Description of Budget**

**5. Supplies and Materials (Items under $5,000 Depreciated Value)**

| **5a. Consumable Supplies** | **Quantity** | **Unit Cost** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| Subtotal - Consumable Supplies | | | | | | | | | | | |

| **5b. Non-Consumable Materials** | **Quantity** | **Unit Cost** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| Subtotal - Non-Consumable Materials | | | | | | | | | | | |
| **Total Supplies and Materials Cost** | | | | | | | | | | | |

| **6. Consultants (Type)** | **Days** | **Rate per Day** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| **Total Consultants Cost** | | | | | | | | | | | |

| **7. Contracts and Sub-Grantees (List individually)** | **Quantity** | **Unit Cost** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| | | | | | | | | | | | |
| **Total Subcontracts Cost** | | | | | | | | | | | |



form **HUD-424-CBW** (2/2003)

# Grant Application Detailed Budget Worksheet

**Detailed Description of Budget**

**8. Construction Costs**

| **8a. Administrative and legal expenses** | **Quantity** | **Unit Cost** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| Subtotal - Administrative and legal expenses | | | | | | | | | | | |

| **8b. Land, structures, rights-of way, appraisal, etc** | **Quantity** | **Unit Cost** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Subtotal - Land, structures, rights-of way, ... | | | | | | | | | | | |

| **8c. Relocation expenses and payments** | **Quantity** | **Unit Cost** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Subtotal - Relocation expenses and payments | | | | | | | | | | | |

| **8d. Architectural and engineering fees** | **Quantity** | **Unit Cost** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Subtotal - Architectural and engineering fees | | | | | | | | | | | |

| **8e. Other architectural and engineering fees** | **Quantity** | **Unit Cost** | **Estimated Cost** | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| Subtotal - Other architectural and engineering fees | | | | | | | | | | | |



form **HUD-424-CBW** (2/2003)

# Grant Application Detailed Budget Worksheet

| 8f. Project inspection fees | Quantity | Unit Cost | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Subtotal - Project inspection fees | | | | | | | | | | | |

| 8g. Site work | Quantity | Unit Cost | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
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| | | | | | | | | | | | |
| Subtotal - Site work | | | | | | | | | | | |

| 8h. Demolition and removal | Quantity | Unit Cost | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Subtotal - Demolition and removal | | | | | | | | | | | |

| 8i. Construction | Quantity | Unit Cost | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Subtotal - Construction | | | | | | | | | | | |

| 8j. Equipment | Quantity | Unit Cost | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
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| | | | | | | | | | | | |
| Subtotal - Equipment | | | | | | | | | | | |

| 8k. Contingencies | Quantity | Unit Cost | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| Subtotal - Contingencies | | | | | | | | | | | |

| 8l. Miscellaneous | Quantity | Unit Cost | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | |
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| | | | | | | | | | | | |
| Subtotal - Miscellaneous | | | | | | | | | | | |
| **Total Construction Costs** | | | | | | | | | | | |



form **HUD-424-CBW** (2/2003)

# Grant Application Detailed Budget Worksheet

| 9. Other Direct Costs | Quantity | Unit Cost | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Item | | | | | | | | | | | |
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| Total Other Direct Costs | | | | | | | | | | | |
| | | | | | | | | | | | |
| Subtotal of Direct Costs | | | | | | | | | | | |

| 10. Indirect Costs | Rate | Base | Estimated Cost | HUD Share | Applicant Match | Other HUD Funds | Other Federal Share | State Share | Local/Tribal Share | Other | Program Income |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Type | | | | | | | | | | | |
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| | | | | | | | | | | | |
| Total Indirect Costs | | | | | | | | | | | |
| **Total Estimated Costs** | | | | | | | | | | | |



form HUD-424-CBW (2/2003)

OMB Approval No. 2501-0017

(Exp. 03/31/2005)

## Grant Application Detailed Budget Worksheet

| Detailed Description of Budget | | | |
|---|---|---|---|
| Analysis of Total Estimated Costs | | Estimated Cost | Percent of Total |
| | | | |
| 1 | Personnel (Direct Labor) | | |
| 2 | Fringe Benefits | | |
| 3 | Travel | | |
| 4 | Equipment | | |
| 5 | Supplies and Materials | | |
| 6 | Consultants | | |
| 7 | Contracts and Sub-Grantees | | |
| 8 | Construction | | |
| 9 | Other Direct Costs | | |
| 10 | Indirect Costs | | |
| | Total: | | |
| | | | |
| | Federal Share: | | |
| | Match (Expressed as a percentage of the Federal Share): | | |
| | | | |



form **HUD-424-CBW** (2/2003)

# Instructions for Completing the Grant Application Detailed Budget Worksheet

| Item | Discussion |
|---|---|
| This form is to be used to provide detailed budget information regarding your proposed program. If your program requires you to provide program activity information you should use a separate HUD-424-CBW to provide information related to each program activity. The detailed information provided on this form should be summarized on either the HUD-424-C or HUD-424-CB forms depending on whether you are requesting funding for a one year period or a multi year period of performance. | |
| 1 - Personnel (Direct Labor) | This section should show the labor costs for all individuals supporting the grant program effort (regardless of the source of their salaries). The hours and costs are for the full life of the grant. If an individual is employed by a contractor or sub-grantee, their labor costs should not be shown here.<br><br>Please include all labor costs that are associated with the proposed grant program, including those costs that will be paid for with in-kind or matching funds.<br><br>Do not show fringe or other indirect costs in this section.<br><br>Please use the hourly labor cost for salaried employees (use 2080 hours per year or the value your organization uses to perform this calculation). An employee working less than full time on the grant should show the numbers of hours they will work on the grant. |
| 2 - Fringe Benefits | Use the standard fringe rates used by your organization. You may use a single fringe rate (a percentage of the total direct labor) or list each of the individual fringe charges. The spreadsheet is set up to use the Total Direct Labor Cost as the base for the fringe calculation. If your organization calculates fringe benefits differently, please use a different base and discuss how you calculate fringe as a comment. |
| 3 - Travel | |
| 3a - Transportation - Local Private Vehicle | If you plan on reimbursing staff for the use of privately owned vehicles or if you are required to reimburse your organization for mileage charges, show your mileage and cost estimates in this section. |
| 3b - Transportation - Airfare | Show the estimated cost of airfare required to support the grant program effort. Show the destination and the purpose of the travel as well as the estimated cost of the tickets.<br><br>Each program notice of funding availability (NOFA) discusses the travel requirements that should be listed here. |
| 3c - Transportation - Other | If you or are charged monthly by your organization for a vehicle for use by the grant program, indicate those costs in this section.<br><br>Provide estimates for other transportation costs that may be incurred (taxi, etc.). |

form **HUD-424-CBW-I** (2/2003)

| | |
|---|---|
| 3d - Per Diem or Subsistence | For travel which will require the payment of subsistence or per diem in accordance with your organization's policies. Indicate the location of the travel.<br><br>Each program NOFA discusses the travel requirements that should be listed here. |
| 4 – Equipment | Equipment is defined by HUD regulations as tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.<br><br>Each program NOFA describes what equipment may be purchased using grant funding. |
| 5 - Supplies and Materials | Supplies and materials are consumable and non-consumable items that have a depreciated unit value of less than $5,000. Please list the proposed supplies and materials as either Consumable Supplies or as Non-Consumable Materials. |
| 5a - Consumable Supplies | List the consumable supplies you propose to purchase. General office or other common supplies may be estimated using an anticipated consumption rate. |
| 5b - Non-consumable materials | List furniture, computers, printers, and other items that will not be consumed in use. Please list the quantity and unit cost. |
| 6 – Consultants | Please indicate the consultants you will use. Indicate the type of consultant (skills), the number of days you expect to use them, and their daily rate. |
| 7 - Contracts and Sub-Grantees | List the contractors and sub-grantees that will help accomplish the grant effort. Examples of contracts that should be shown here include contracts with Community Based Organizations; liability insurance; and training and certification for contractors and workers.<br><br>If any contractor, sub-contractor, or sub-grantee is expected to receive over 10% of the total Federal amount requested, a separate Grant Application Detailed Budget (Worksheet) should be developed for that contractor or sub-grantee and the total amount of their proposed effort should be shown as a single entry in this section.<br><br>Unless your proposed program will perform the primary grant effort with in-house employees (which should be listed in section 1), the costs of performing the primary grant activities should be shown in this section.<br><br>Types of activities which should be shown in this section:<br>• Contracts for all services<br>• Training for individuals not on staff<br>• Contracts with Community Based Organizations or Other Governmental Organizations (note the 10% requirement discussed above)<br>• Insurance if your program will procure it separately<br><br>Please provide a short description of the activity the contractor or subgrantee will perform, if not evident. |

form **HUD-424-CBW-I** (2/2003)

| | |
|---|---|
| 8 – Construction Costs | |
| 8a – Administrative and legal expenses | Enter estimated amounts needed to cover administrative expenses. Do not include costs that are related to the normal functions of government. |
| 8b – Land, structures, rights-of way, appraisal, etc. | Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements). |
| 8c – Relocation expenses and payments | Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc. |
| 8d – Architectural and engineering fees | Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan). |
| 8e – Other architectural and engineering fees | Enter estimated engineering costs, such as surveys, tests, soil borings, etc. |
| 8f – Project inspection fees | Enter estimated engineering inspection costs. |
| 8g – Site work | Enter the estimated site preparation and restoration costs that are not included in the basic construction contract. |
| 8h – Demolition and removal | Enter the estimated costs related to demolition activities. |
| 8i – Construction | Enter estimated costs of the construction contract. |
| 8j - Equipment | Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract. |
| 8k – Contingencies | Enter any estimated contingency costs. |
| 8l – Miscellaneous | Enter estimated miscellaneous costs. |
| 9 - Other Direct Costs | Other Direct Costs include a number of items that are not appropriate for other sections.<br><br>Other Direct Costs may include:<br>• Staff training<br>• Telecommunications<br>• Printing and postage<br>Relocation, if costs are paid directly by your organization (if relocation costs are paid by a subgrantee, it should be reflected in Section 7) |
| 10 - Indirect Costs | Indirect costs (including Facilities and Administration costs) are those costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved.<br><br>Indicate your approved Indirect Cost Rate (if any) and calculate the indirect costs in accordance with the terms of your approved indirect cost rate and enter the resulting amount. Also show the applicable cost base amount and identify the proposed cost base type. |
| Total Estimated Costs | Enter the grand total of all the applicable columns. |

The eight rightmost columns allow you to identify how the costs will be spread between the HUD Share and other contributors (including Match funds and Program Income). This information will help the reviewers better understand your program and priorities.

form **HUD-424-CBW-I** (2/2003)

# 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:**
- ☐ a. CONTRACT
- b. GRANT
- c. COOPERATIVE AGREEMENT
- d. LOAN
- e. LOAN GUARANTEE
- f. LOAN INSURANCE

**2. Status of Federal Action:**
- ☐ a. BID/OFFER/APPLICATION
- b. INITIAL AWARD
- c. POST-AWARD

**3. Report Type**
- ☐ a. INITIAL FILING
- b. MATERIAL CHANGE

**FOR MATERIAL CHANGE ONLY:**
YEAR _____ QUARTER _____
**DATE OF LAST REPORT** _____

**4. Name and Address of Reporting Entity:**
☐ PRIME ☐ SUBAWARDEE
TIER _____, *IF KNOWN:*

**Congressional District,** *if known:*

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of**

**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:*
$

**10a. Name and Address of Lobbying Entity**
*(If individual, last name, first name, MI)*

**b. Individual Performing Services** *(including address if different from No. 10A) (last name, first name, MI)*

*(attach Continuation sheet(s) SF LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply):*
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply):*
- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  value _____

**13. Type of Payment** *(check all that apply):*
- ☐ a. RETAINER
- ☐ b. ONE-TIME FEE
- ☐ c. COMMISSION
- ☐ d. CONTINGENT FEE
- ☐ e. DEFERRED
- ☐ f. OTHER; SPECIFY:

**14. Brief Description of Services performed or to be Performed and Date(s) of Service, including offier(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:**

*(attach Continuation sheet(s) SF LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**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 available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Printed Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

AUTHORIZED FOR LOCAL REPRODUCTION
Standard Form - LLL

# DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

## INSTRUCTIONS

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. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. 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 entity 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 9a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. if payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. In other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

# Applicant/Recipient Disclosure/Update Report

**U.S. Department of Housing and Urban Development**

OMB Approval No. 2510-0011 (exp. 3/31/2003)

**Instructions.** (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

## Applicant/Recipient Information

**Indicate whether this is an Initial Report** ☐ **or an Update Report** ☐

| | |
|---|---|
| 1. Applicant/Recipient Name, Address, and Phone (include area code):<br><br>( ) - | 2. Social Security Number or Employer ID Number:<br><br>- - |
| 3. HUD Program Name | 4. Amount of HUD Assistance Requested/Received |

5. State the name and location (street address, City and State) of the project or activity:

## Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
   ☐ **Yes** ☐ **No**

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD) , involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
   ☐ **Yes** ☐ **No.**

If you answered "**No**" to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

## Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

| Department/State/Local Agency Name and Address | Type of Assistance | Amount Requested/Provided | Expected Uses of the Funds |
|---|---|---|---|
| | | | |
| | | | |

(**Note**: Use Additional pages if necessary.)

## Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

| Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first) | Social Security No. or Employee ID No. | Type of Participation in Project/Activity | Financial Interest in Project/Activity ($ and %) |
|---|---|---|---|
| | | | |

(**Note**: Use Additional pages if necessary.)

## Certification

**Warning**: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

| | |
|---|---|
| Signature:<br><br>X | Date: (mm/dd/yyyy) |

**Public reporting burden** for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

**Privacy Act Statement**. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

**Note**: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

## Instructions

### Overview.

**A.** Coverage. You must complete this report if:

(1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;

(2) You are updating a prior report as discussed below; or

(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

**B. Update reports (filed by "Recipients" of HUD Assistance): General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

### Line-by-Line Instructions.

**Applicant/Recipient Information.**

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

**Part I. Threshold Determinations - Applicants Only**

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

**Part II. Other Government Assistance and Expected Sources and Uses of Funds.**

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

**Part III. Interested Parties.**

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   **Note:** A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

**Note** that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

**Notes:**

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

# Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

**To Be Completed by HUD**

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form **HUD-2993** (2/99)

**Client Comments and Suggestions**

**U.S. Department of Housing and Urban Development**

# You are our Client! Your comments and suggestions, please!

The Department of Housing and Urban Development in preparing this Notice of Funding Availability and application forms, has tried to produce a more user friendly, customer driven funding process. Please let us have your comments and recommendations for improvements to this document. You may leave this form attached to your application, or feel free to detach the form and return it to:

The Department of Housing and Urban Development
Office of Departmental Grants Management and Oversight
Room 3156
451 7th Street, SW
Washington, DC 20410

**Please Provide Comments on HUD's Efforts:**

**The NOFA** (insert title) _____

is: (please check one)

(a) ☐ is clear and easily understandable

(b) ☐ better than before, but still needs improvement (please specify)

(c) other (please specify)

**The application form** (insert title) _____

is: (please check one)

(a) ☐ is acceptable given the volume of information required by statute and the volume of information required for accountability in selecting and funding projects.

(b) ☐ is simpler and more user-friendly than before, but still needs work (please specify).

(c) other comments (please specify)

**Name & Organization** (Optional):

Are additional pages attached? ☐ Yes ☐ No

Previous versions obsolete form **HUD-2994** (03/2003)

[FR Doc. 03–12458 Filed 5–19–03; 8:45 am]
BILLING CODE 4210–62–C

Federal Register

Tuesday,
May 20, 2003

# Part IV

# Securities and Exchange Commission

## 17 CFR Part 240

## Request for Comment on Nasdaq Petition Relating to the Regulation of Nasdaq-Listed Securities; Proposed Rule

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 240**

**[Release No. 34–47849; File No. S7–11–03]**

**RIN 3235–AI86**

## Request for Comment on Nasdaq Petition Relating to the Regulation of Nasdaq-Listed Securities

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Concept release; request for comment.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') seeks comment on a petition submitted by the Nasdaq Stock Market, Inc. (''Nasdaq'') concerning the regulation of Nasdaq-listed securities. Specifically, Nasdaq requests that the Commission amend the rules of all markets that trade Nasdaq-listed securities to establish uniform trading rules, and to ensure equal surveillance and enforcement of those rules; order that the exchanges' costs of regulation, including costs associated with proper data collection, surveillance, and enforcement, be aggregated and deducted from the market data revenue collected pursuant to the Nasdaq Unlisted Trading Privileges Plan (''UTP Plan''); and prohibit the launch or continuation of Nasdaq trading by any market that fails to protect investors as required under the Securities Exchange Act of 1934 (''Act''). In addition, the Commission requests comment on whether the same actions would be appropriate for the regulation and trading of exchange-listed securities.

**DATES:** Comments must be received on or before June 19, 2003.

**ADDRESSES:** To help us process and review your comments more efficiently, comments should be sent by one of the two methods specified below. Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–11–03. Comments submitted by E-mail should include this file number in the subject line. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–1001. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

**FOR FURTHER INFORMATION CONTACT:** Terri L. Evans at (202) 942–4162 or Ian K. Patel at (202) 942–0089 in the Division of Market Regulation, Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

On April 14, 2003, the Commission received a petition from Nasdaq requesting that the Commission take certain actions (''Nasdaq Petition'') to respond to the greater fragmentation of trading in Nasdaq-listed securities across markets. The Commission is publishing Nasdaq's Petition to expedite and facilitate dialogue among all market participants on the issues raised by Nasdaq. The Commission is not endorsing Nasdaq's characterization of the regulation of Nasdaq-listed securities or its proposed solutions. Rather, the Commission is seeking comment on Nasdaq's Petition and, more generally, the issues raised by the Nasdaq Petition.

### II. Background

#### *A. Duties of a Self-Regulatory Organization*

In fashioning the Act, Congress chose to develop a unique pattern of regulation combining both industry and government responsibility.[2] This pattern calls upon the exchanges and the National Association of Securities Dealers, Inc. (''NASD'') to exercise delegated governmental power to enforce at their own initiative compliance by members of the securities industry with both the legal requirements laid down in the Act and ethical standards which go beyond those requirements.[3] As a result, the regulatory roles that self-regulatory organizations (''SROs'') play are a vital element in the regulation of the securities industry. An SRO is required to carry out the purposes of the Act, as well as enforce compliance by its members, and persons associated with its members, with the federal securities laws and the SRO's rules.[4]

An SRO is required to have rules designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to refrain from imposing any unnecessary or inappropriate burdens on competition.[5] For example, an SRO must maintain procedures to surveil against rule violations, including insider trading and market manipulation. While different market structures may imply different procedures for accomplishing this task, SROs are required to expend sufficient resources, in terms of both staff and technology, to support their surveillance functions. This includes having officers with expertise in monitoring for compliance with federal securities laws and SRO rules, and an understanding of the role of a registered exchange or association as an SRO. An SRO must deploy adequate examination and surveillance systems and maintain an audit trail of the transactions in its system. And SROs must have adequate measures in place to maintain listing and maintenance standards. SROs' regulatory programs, including those related to the trading of Nasdaq securities, are periodically inspected by the Commission.

An SRO also is required to enforce compliance with applicable laws and rules, and discipline members for violations relating to transactions executed in its market.[6] This responsibility includes the establishment of a disciplinary process including appropriate sanctions for violations of the rules and a fair procedure for administering the

[1] Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submission. Submit only information that you wish to make publicly available.

[2] H.R. Doc. No. 123, 94th Cong., 1st Sess. 48 (1975), Legislative History of the Securities Reform Act of 1975.

[3] *Id.* The Commission is charged with supervising the exercise of this regulatory power to assure that it is used effectively to fulfill the responsibilities assigned to the self-regulatory organizations and that it is not used in a manner inimical to the public interest.

[4] *See* section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1) and section 15A(b)(2), 15 U.S.C. 78*o*–3(b)(2).

[5] *See* section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5); section 6(b)(8) of the Act, 15 U.S.C. 78f(b)(8); section 15A(b)(6), 15 U.S.C. 78*o*–3(b)(6); and section 15A(b)(9), 15 U.S.C. 78*o*–3(b)(9). For example, an SRO must also have written listing and maintenance standards, as well as an adequate regulatory staff to apply those standards. *See* section 12(d) of the Act, 15 U.S.C. 78l(d); Rule 12d2–2, 17 CFR 240.12d2–2 (requiring national securities exchanges to file an application with the Commission to strike a security from listing and registration). In addition, an SRO must have rules that ensure that no member's order is unfairly disadvantaged and all members are treated fairly. An SRO also is expected to have rules establishing procedures for the clearance and settlement of trades effected on the exchange. *See* Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998), at section IVB(1).

[6] *See* 19(g)(1) of the Act, 15 U.S.C. 78s(g)(1); *See also* Regulation of Exchanges and Alternative Trading Systems, Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998), at section IVB(1).

disciplinary process.[7] The Commission has previously permitted SROs to agree, with Commission approval, with each other on how to allocate regulatory responsibilities. Rule 17d–2 under the Act permits SROs to establish joint plans for allocating the regulatory responsibilities imposed by the Act with respect to common members.[8] An SRO participating in a regulatory plan is relieved of regulatory responsibilities with respect to a broker-dealer member of such SRO, if those regulatory responsibilities have been designated to another SRO under the regulatory plan. In addition, the Commission recognizes that an SRO can contract with other SROs, pursuant to a regulatory service agreement, to perform certain of these oversight activities. Nonetheless, an SRO retains ultimate responsibility for its self-regulatory responsibilities, even if it has contracted with another SRO to perform oversight activities.

*B. Trading in NASDAQ Listed Securities*

On April 14, 2003, Nasdaq submitted the Nasdaq Petition, requesting that the Commission address ''unequal and inadequate regulation by some markets that trade securities listed on Nasdaq.'' [9] As discussed in Nasdaq's Regulation White Paper,[10] Nasdaq believes that as trading in Nasdaq securities spreads to a greater number of venues, it becomes increasingly difficult for the NASD or any other individual SRO to oversee adequately trading in those securities. Moreover, Nasdaq contends that this difficulty is particularly true with respect to broker-dealers that quote on one market while printing trades to another market or those that quote and trade the same security in more than one market. Nasdaq believes that it is often unclear which market is responsible for regulating such broker-dealers' activities, and that no market is likely to have adequate information to effectively oversee that activity.[11]

Until recently, most trading in Nasdaq-listed securities was regulated by the NASD. With guidance from the Commission, the NASD developed a regulatory framework to provide investor protection in an open trading environment with multiple market makers. Nasdaq claims that when trading in Nasdaq stocks was almost exclusively limited to the Nasdaq system, NASD was able to view trading in Nasdaq stocks and respond quickly and effectively to protect investors.

According to Nasdaq, the fragmentation of trading of securities listed on Nasdaq by various national and regional exchanges has caused the regulation of Nasdaq trading to become uncoordinated. Nasdaq states that there are harmful disparities in the markets' abilities to regulate the trading of Nasdaq-listed securities: for instance, Nasdaq states that several exchanges do not have rules approved by the Commission for gathering the detailed trading data necessary for the detection of fraud, manipulation, insider trading, and other violations.

In addition, Nasdaq asserts that some markets are lowering their execution and reporting fees to compete for trades in Nasdaq-listed securities. Nasdaq also states that, to hold down costs, these markets avoid incurring new regulatory expenses, such as the costs of adapting their existing rules and surveillance systems to the unique structure and patterns of Nasdaq trading. According to Nasdaq, these markets use the savings from less regulation as an inducement to attract trading away from the NASD's highly regulated markets to less regulated markets, to the detriment of investors.

Nasdaq initially raised many of these concerns in its Regulation White Paper prior to submitting its Petition. In response to the Regulation White Paper, The Cincinnati Stock Exchange, Inc. (''CSE'') asserted that ''the current surveillance infrastructure provides an effective means for the ongoing regulation of the markets. This infrastructure, which has been in place for over 20 years, is organized in a manner that fairly distributes responsibilities and costs among the various self-regulatory organizations.'' [12] CSE also noted that the Intermarket Surveillance Group (''ISG'') was established for the purpose of coordinating regulatory efforts to address potential intermarket manipulations and trading abuses. As a result, CSE recommended, in part, that Nasdaq work with the ISG to address its concerns regarding intermarket surveillance methodologies and the allocation of intermarket responsibilities prior to abandoning the existing SRO and ISG infrastructure. In addition, CSE contended that Nasdaq is merely speculating about the adequacy of other markets' surveillance programs, the adequacy of which is subject to Commission oversight and generally kept confidential between the Commission and the respective regulator. And lastly, CSE noted that if the regulatory concerns raised by Nasdaq exist, they exist for all securities, including exchange-listed securities.

**III. Summary of the NASDAQ Petition**

To address the regulatory issues identified by Nasdaq, Nasdaq requests that the Commission intercede in three ways. First, Nasdaq requests that the Commission exercise its authority under section 19(c) of the Act [13] and Rule 192 of the Commission's Rules of Practice [14] to amend the rules of all markets that trade Nasdaq-listed securities to establish uniform trading rules, and to ensure equal surveillance and enforcement of those rules. Second, Nasdaq requests that the Commission exercise its authority under section 11A(a)(3)(B) of the Act,[15] and Rule 11Aa3–2(b)(2) [16] to immediately order that the exchanges' costs of regulation—including audit trail collection, surveillance, and enforcement—be aggregated and deducted from the market data revenue collected pursuant to the UTP Plan.[17] Finally, Nasdaq asks the Commission to identify markets that trade Nasdaq-listed securities without approved rules, order audit trails, surveillance, and examination programs that are sufficient to protect investors that buy and sell Nasdaq-listed securities on those markets. For those that do not, Nasdaq requests that the Commission exercise its authority under

[7] *See* section 6(b)(6) of the Act, 15 U.S.C. 78f(b)(6); section 6(b)(7) of the Act, 15 U.S.C. 78f(b)(7); section 15A(b)(7), 15 U.S.C. 78*o*–3(b)(7); and section 15A(b)(8), 15 U.S.C. 78*o*–3(b)(8). While exchanges are required to enforce compliance by their members, and persons associated with their members, with applicable laws and rules, the Commission has used its authority under sections 17 and 19 of the Act to allocate to particular SROs oversight of broker-dealers that are members of more than one SRO. *See* 15 U.S.C. 78q and 78s. *See also* 17 CFR 240.17d–2; 17 CFR 240.19g2–1.

[8] 17 CFR 240.17d–2.

[9] *See* letter to Jonathan G. Katz, Secretary, Commission, from Edward Knight, Executive Vice President and General Counsel, Nasdaq, dated April 11, 2003 at 2 (File No. 4–479).

[10] Nasdaq Regulation White Paper: A Call for a Fairer Allocation of Responsibilities and Costs in a Fragmented Market, dated January 24, 2003 (''Regulation White Paper'').

[11] *See* Regulation White Paper, *supra* note, at 1.

[12] *See* letter from Jeffrey T. Brown, Senior Vice President, Secretary and General Counsel, CSE, to Chairman Pitt, Commissioner Atkins, Commissioner Campos, Commissioner Glassman, and Commissioner Goldschmid, dated February 19, 2003, at 1 (''CSE Letter''). The CSE also stated that if ''weaknesses exist in the system, CSE supports efforts by all markets to work together and improve intermarket coordination of securities regulation to ensure that our markets are fair, orderly and protect investors.'' *Id.*

[13] 15 U.S.C. 78s(c).

[14] 17 CFR 201.192.

[15] 15 U.S.C. 78k–1(a)(3)(B).

[16] 17 CFR 240.11Aa3–2(b)(2).

[17] The UTP Plan is the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis.

section 12(f)(2) and (f)(3) of the Act [18] to prohibit the launch or continuation of Nasdaq trading by any market that fails to protect investors as required under the Act.

Each of Nasdaq's proposals is set forth in great detail below.

*A. Uniform Trading Rules*

Nasdaq requests that the Commission act immediately to establish uniform trading rules and ensure equal surveillance and enforcement of those rules because of its concern that investors are potentially harmed by the lack of uniform trading rules and from unequal surveillance and enforcement of rules.[19] Nasdaq states that it attempted, unsuccessfully, to persuade the other exchanges that trade Nasdaq stocks to act jointly to adopt uniform market rules and surveillance and enforcement mechanisms to eliminate these regulatory disparities. Specifically, Nasdaq asked that the UTP Plan be amended to prohibit certain defined conduct. Under that proposal, so-called Prohibited Conduct would have included, without limitation: any activity that is prohibited by any provision of the Act or rule adopted under the Act, market manipulation, illegal short selling, insider trading, fraud, front running, marking the open or the close, and non-compliance with the limit order display rule, and firm quote rule.[20] Nasdaq believes that to prevent regulatory arbitrage all SROs' rulebooks should contain uniform rules on these matters, and that each SRO should vigorously surveil and enforce those uniform rules.

For example, Nasdaq claims that although it has a short-sale rule, several UTP Exchanges trade Nasdaq issues with no short-sale price test. Nasdaq asserts that industry participants route short-sale orders to exchanges without short-sale rules specifically to avoid NASD and Nasdaq rule restrictions. Nasdaq claims that certain exchanges publicize this disparity to attract order flow to their markets.

In addition, Nasdaq concludes, after review of the rulebooks of various markets, that no other market currently executing trades in Nasdaq-listed securities has rules requiring its members to report order audit trail information or operates a Commission-approved order audit trail. Nasdaq collects order audit trail information through its Order Audit Trail System (''OATS'') and through its Automated Confirmation Transaction service (''ACT''). Nasdaq asserts that the NASD uses this data to create a fully integrated audit trail of quotes, trades, and orders to run its surveillance programs to detect insider trading, fraud, best execution violations, spoofing, purposeful late trade reporting, short-sale violations, untimely execution of market orders, and a wide variety of other potential rule violations.

For transactions reported away from Nasdaq, Nasdaq states that the NASD eventually receives the quotes and trade reports of the regional exchanges through the ISG. However, Nasdaq claims that the ISG audit trail only provides trade information at the clearing firm level (as opposed to both the clearing firm and the executing firm levels). In addition, according to Nasdaq, the time fields in the data are not generated by clocks subject to uniform synchronization protocols, as is the case with OATS data. Moreover, Nasdaq states that ISG data is not provided in a format that is conducive to integration into NASD's automated surveillance systems. As a result, manually processing this information can be time-intensive; furthermore, Nasdaq states that this data is not received until two days after the trade date. Nasdaq believes that such a delay can significantly hinder NASD's ability to investigate unlawful trading activity on a real-time basis and can prevent NASD from obtaining non-stale regulatory information in an ongoing investigation. The NASD uses this information to detect violations involving wash sales, fraud, insider trading, marking the close, best execution, riskless principal trade reporting, Regulation M, firm quote compliance, and limit order protection, among others.[21]

At a more fundamental level, Nasdaq believes that consolidated regulation protects investors better than the coordinated regulation that ISG facilitates. In addition, Nasdaq believes that consolidated regulation should be crafted by the entities that will be governed. ISG is a voluntary organization whose membership includes SROs (only some of which trade Nasdaq-listed securities) and certain foreign entities that are not regulated as SROs by the Commission.

To combat these perceived problems, Nasdaq asks the Commission, at a minimum, to add to the rules of all SROs that trade Nasdaq-listed securities, rules requiring an electronic audit trail identical to the NASD's OATS Rules [22] and short-sale restrictions similar to NASD Rule 3350. Nasdaq also asks that, if the Commission's review of other markets' rules, surveillance, or enforcement reveals inequalities that can be addressed through the adoption of uniform rules, the Commission add those rules as well, to ensure that there are no regulatory inconsistencies among SROs that trade Nasdaq-listed securities.

Request for Comments on the Need for Uniform Trading Rules and Surveillance

The Commission welcomes comment on all aspects of Nasdaq's petition, including the following matters:

Q1. Do commenters agree with Nasdaq that there is unequal regulation of trading in Nasdaq securities?

Q2. Should all exchanges and associations trading Nasdaq securities have rules requiring detailed audit trail information?

Q3. Should all exchanges and associations trading Nasdaq securities be required to automate their surveillance and examination of Nasdaq trading on their markets?

Q4. Should all exchanges and associations trading Nasdaq securities have similar rules to regulate short selling?

Q5. What other trading rules should be uniform across all markets?

Q6. How should the Commission address any regulatory gaps that can arise when trading in the same security is fragmented across different SROs?

Q7. To what extent is ISG a useful mechanism for coordinating intermarket regulatory efforts? Does ISG fully address the regulatory gaps Nasdaq contends exist? Does the fact that the Commission does not have direct oversight of ISG limit the sufficiency of the ISG framework in ensuring adequate regulation of violative conduct in the trading of Nasdaq securities that can occur across markets, such as insider trading or certain market manipulations?

Q8. Are there models sufficient to address potential concerns raised by fragmentation of regulation by multiple SROs trading Nasdaq securities?

Q9. Are there advantages or disadvantages to a single market regulator with regulatory oversight across all markets trading Nasdaq securities?

[18] 15 U.S.C. 78l(f)(2), (f)(3).

[19] Nasdaq discussed in greater details its views about the harmful regulatory arbitrage that occurs when markets apply different trading rules to the same conduct in its Regulation White Paper.

[20] Most members of the UTP Operating Committee asserted that the Nasdaq UTP Plan was not the proper forum for resolving regulatory issues.

[21] Nasdaq states that on an average day, OATS processes 65 million order reports and that NASD currently has six full time staff members dedicated to OATS compliance.

[22] See NASD Rules 6951 through 6957.

Q10. Should a competitive bidding process be required to determine which entity will serve as the single regulator?

*B. Allocation of Regulatory Costs*

Nasdaq urges the Commission to equitably allocate regulatory costs across markets that trade Nasdaq-listed securities to ensure that intermarket competition does not come at the cost of adequate regulation. As set forth in the Regulation White Paper, Nasdaq believes that all markets that trade the same securities should share the responsibility of equal regulation. In Nasdaq's view, these shared responsibilities include the uniform rules, surveillance, and enforcement discussed above.

Nasdaq claims that in the absence of a framework for adopting uniform order audit trails and uniform enforcement of marketplace rules, Nasdaq is forced to subsidize other markets' regulatory costs, creating a classic free-riding dilemma. Nasdaq funds NASD's OATS to collect trading information from all NASD members, whether or not the trades are reported to Nasdaq. For example, Nasdaq claims that Island ECN (''Island''), an NASD member, reports 15 percent of all Nasdaq trades to the CSE, and then, where Island is the reporting party, Island sends detailed information about those trades to OATS. Therefore, according to Nasdaq, although CSE receives the market data revenue attributable to those trades, the NASD and Nasdaq bear the costs of receiving and storing Island's OATS data as well as the costs of regulating Island's conduct as an NASD member.

Nasdaq believes that the fairest way to allocate the costs of supervising the trading of Nasdaq stocks is to aggregate the exchanges' costs of regulation, which include costs associated with surveillance and enforcement, and to deduct that amount from the market data revenue collected pursuant to the Nasdaq UTP Plan. Nasdaq believes that the Commission could apply this allocation method to today's regulatory environment, as well as in the future to the single regulator, ISG, and DEA regulatory models that Nasdaq has identified in its Regulation White Paper. Nasdaq believes that this means of funding aggregate regulatory costs will counter the existing economic incentives that are leading markets to reduce their regulatory costs to compete for order flow.

Request for Comments on the Allocation of Regulatory Costs

The Commission welcomes comment on all aspects of Nasdaq's petition requesting the reallocation of regulatory costs, including the following matters:

Q1. Should proceeds from the Nasdaq UTP Plan be withheld to pay for regulatory costs?

Q2. Would Nasdaq's proposal to aggregate and deduct regulatory costs from market data revenue result in adequate regulation? If so, what costs would appropriately be considered regulatory costs and therefore, appropriately deducted from the market data revenue?

Q3. Should other methods of fairly allocating regulatory costs be considered?

Q4. Should the NASD be required, as suggested by the CSE, to alter its systems to include more data from inter-market trading to improve inter-market surveillance? [23] If so, who should pay for this enhancement?

Q5. Who would determine what are legitimate regulatory costs? On what basis should such a determination be made?

*C. Prohibition of Trading in Nasdaq-Listed Securities*

Finally, Nasdaq asks the Commission to identify the markets that trade Nasdaq-listed securities without approved rules, order audit trails, surveillance, and examination programs sufficient to protect investors that buy and sell Nasdaq-listed securities on those markets. Specifically, Nasdaq believes it is unclear whether SROs, other than the NASD, have comparable algorithmic systems and examinations focused on detecting violations of Commission and SRO investor protection and trading rules.[24] In addition, while trading on Nasdaq is subject to a short-sale price test (NASD Rule 3350), several exchanges trade Nasdaq-listed securities without being subject to a comparable price test.[25] As a result of such disparities, Nasdaq believes that the level of regulatory protection an investor receives depends almost entirely on the market to which the investor's order is routed. For those markets that in Nasdaq's view do not have adequate regulatory protections, Nasdaq asks the Commission to exercise its authority under section 12(f)(2) and (f)(3) of the Act [26] to prohibit the launch or continuation of Nasdaq trading by any market that fails to protect investors as required under the Act.

**IV. Exchange-Listed Securities and Exchange-Listed Options**

In response to the Regulation White Paper, CSE asserted that Nasdaq ignored that ''the same cross-market manipulation issues that form the predicate for the regulatory solution it advocates in the Nasdaq world apply equally to all other securities, including the NYSE-listed stocks in which Nasdaq trades over 10% of the volume.''[27] The CSE noted that, contrary to its position on the regulation of Nasdaq securities, Nasdaq did not appear to be arguing that the same surveillance programs were inadequate as applied toward NYSE-listed securities.[28] Subsequently, in its Petition, Nasdaq expressly stated that it was not addressing the application of the principles expressed in its Petition to exchange-listed securities.[29]

The Commission notes that exchange-listed securities and securities options may be traded on more than one market and, therefore, the same regulatory issues raised by Nasdaq could arise. At present, trading in exchange-listed securities is more concentrated than the trading in Nasdaq securities.[30] In addition, the options markets are in the process of implementing a consolidated options audit trail system that will enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules.[31]

**Request for Comments on the Application of Nasdaq's Recommendations to Exchange Listed Securities**

The Commission requests comment on whether the same regulatory concerns raised by Nasdaq for Nasdaq securities, such as regulatory

[23] *See* CSE Letter, *supra* note at note 4.

[24] Nasdaq represented that while the CSE has asserted that its Firm Order Submission system is an order audit system for the surveillance of trading on the CSE, it was Nasdaq's understanding that FOS is a voluntary system used primarily for settling commercial disputes between traders rather than an integrated, comprehensive means for surveilling trading on the CSE.

[25] The Commission notes, however, that short sales in Nasdaq securities would be subject to borrowing requirements, pursuant to an NASD or UTP exchange rule. *See, e.g,* NASD Rule 3370.

[26] 15 U.S.C. 78l.

[27] *See* CSE Letter, *supra* note 12, at 2.

[28] *Id.*

[29] *See* Nasdaq Petition at note 11.

[30] *See* Table 12, Share Volume by Exchanges, SEC Annual Report 2002 at 175. In 2001, the NYSE had 84.31 percent of the share volume for exchanges. Share volume for exchanges includes stocks, rights, and warrants.

[31] *See* Exchange Act Release No. 43268 (September 11, 2000) (order requiring, in part, the options markets to design and implement a consolidated options audit trail system that provides an accurate, time-sequenced record of electronic orders, quotations, and transactions). The International Securities Exchange (''ISE'') was not a respondent in the proceedings instituted by this order and therefore has not been ordered to comply with the undertaking. Nevertheless, the ISE has agreed to participate in the audit trail.

fragmentation and arbitrage, exist for exchange-listed stocks and options. In addition, the Commission specifically requests comment on the following:

Q1. Do commenters believe that there is unequal regulation of exchange-listed securities among the markets trading such securities? If so, do commenters believe that the proposals made by Nasdaq with respect to Nasdaq securities would address such unequal regulation in the listed markets? If not, what other approaches do commenters recommend?

Q2. Should the Commission require an intermarket consolidated order audit trial system for Nasdaq-listed and exchange-listed securities, other than options?

## V. General Request for Comments

In addition to the questions above, the Commission seeks comment on issues presented in the Nasdaq Petition. More specifically, how should the Commission make sure that each SRO that trades Nadsaq securities fulfills its statutory obligations to surveil trading in such securities?

By the Commission.

Dated: May 14, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–12604 Filed 5–19–03; 8:45 am]

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