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

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2600

RIN 3209–AA21

Updating Amendments to Office of Government Ethics Organization and Functions Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is updating its organization and functions regulation. These amendments are necessary because of organizational changes that have occurred within OGE since the regulation was first published in 1990. In addition, OGE is making other minor changes to improve the regulation and to make information concerning OGE programs more readily available to the public and to other Federal agencies.

EFFECTIVE DATE: July 15, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Horton, Attorney Advisor, Office of Government Ethics; Telephone: 202–482–9300; TDD (Telecommunications Device for the Deaf and Speech Impaired): 202–482–9293; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION: In recent years, the Office of Government Ethics has made several changes to its organizational structure. These changes were made to improve OGE's internal agency operations, provide more emphasis on its education programs, increase emphasis on its annual and termination financial disclosure systems for Presidential appointees confirmed by the Senate, and to expand many of the other ethics program services that OGE provides to executive branch agencies.

Among these changes, OGE created a new Office of Agency Programs (OAP) to replace the former Office of Program Assistance and Review. OAP was later reorganized to include three divisions: the Education Division, the Program Services Division, and the Program Review Division.

Since OGE's organization and functions regulation was published in 1990, as codified at 5 CFR part 2600, OGE has also established the Office of Government Relations and Special Projects (OGRSP). Over the past several years, OGE has received requests from U.S. foreign policy-making entities and has provided technical assistance through the OGRSP to foreign governments and multinational organizations concerning preventive programs (like OGE's) which are part of larger anticorruption efforts.

The Office of Administration and Information Management (OAIM) was added as a separate office within OGE due to the increased use of information technology within OGE and by other Federal agencies in fulfilling their respective missions. The OAIM assists OGE in its continuing efforts to provide improved customer service, to persons both within and outside the executive branch of the Federal Government.

Part 2600 is now being amended to reflect the addition of these offices and to provide a short description of the functions of each.

The statement of the functions of the Office of the Director in paragraph (b) of § 2600.103 has been modified to reflect additional responsibilities that have been acquired by the OGE Director since 1990 and to accommodate recent changes made to that office's organization. Pursuant to Executive Order 12805, the Director serves as a member of both the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE). These councils were established to coordinate and enhance Governmental efforts to promote integrity and efficiency and to detect and prevent fraud, waste, and abuse in Federal programs. The Director also serves, pursuant to Executive Order 12993, as a member of the Integrity Committee. This committee receives, reviews and refers for investigation certain allegations of wrongdoing against Inspectors General and certain staff members of the Inspector General's Offices.

The Director's responsibilities also include leading many of OGE's outreach activities with private and nongovernmental sector entities. These activities are designed to promote awareness of OGE and its mission as well as to share ideas and best practices. We have amended § 2600.103 to reflect these new responsibilities.

Finally, other changes being made in part 2600 include providing OGE's Internet Web site address, providing OGE's new main telephone numbers, and updating the information in the section describing OGE's history. Other minor changes were made to some section headings in this part and to the regulation's language in a few places.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment, and 30-day delay in effectiveness as to this regulatory revision. The notice, comment and delayed effective date are being waived because this regulation concerns matters of agency organization, practice and procedure.

Executive Order 12866

In promulgating these amendments, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed ''significant'' thereunder.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register.**

List of Subjects in 5 CFR Part 2600

Conflict of interests, Government employees, Organization and functions (Government agencies).

Approved: July 1, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is revising 5 CFR part 2600 to read as follows:

PART 2600—ORGANIZATION AND FUNCTIONS OF THE OFFICE OF GOVERNMENT ETHICS

Sec.
2600.101 Mission and history.
2600.102 Contact information.
2600.103 Office of Government Ethics organization and functions.

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

§ 2600.101 Mission and history.

(a) The Office of Government Ethics (OGE) was established by the Ethics in Government Act of 1978, Public Law 95–521, 92 Stat. 1824 (1978). OGE exercises leadership in the executive branch of the Federal Government to prevent conflicts of interest on the part of executive branch employees and resolve those conflicts of interest that do occur. In partnership with executive branch departments and agencies, OGE fosters high ethical standards for executive branch employees which, in turn, strengthens the public's confidence that the Government's business is conducted with impartiality and integrity.

(b) Originally an entity within the Office of Personnel Management, OGE became a separate executive branch agency on October 1, 1989, pursuant to section 3 of the Office of Government Ethics Reauthorization Act of 1988, Public Law 100–598, 102 Stat. 3031 (1988). OGE is the supervising ethics office for all executive branch officers and employees pursuant to the Ethics Reform Act of 1989, Public Law 101–194, 103 Stat. 1716 (1989), as amended by Public Law 101–280, 104 Stat. 149 (1990). Additionally, OGE has various responsibilities under Executive Order 12674 of April 12, 1989, ''Principles of Ethical Conduct for Government Officers and Employees'' (3 CFR, 1989 Comp., pp. 215–218), as modified by Executive Order 12731 of October 17, 1990 (3 CFR, 1990 Comp., pp. 306–311).

§ 2600.102 Contact information.

(a) *Address.* The Office of Government Ethics is located at 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917. OGE does not have any regional offices.

(b) *Web site.* Information about OGE and its role in the executive branch ethics program as well as copies of publications that have been developed for training, educational and reference purposes are available electronically on OGE's Internet Web site (*http://www.usoge.gov*). The Web site has copies of various Executive orders, statutes, and regulations that together form the basis for the executive branch ethics program. The site also contains ethics advisory opinions and letters published by OGE, as well as other information pertinent to the Office.

(c) *Telephone numbers.* OGE's main telephone number is 202–482–9300. Persons who are deaf or speech impaired may contact OGE at the following TDD (Telecommunications Device for the Deaf and Speech Impaired) number: 202–482–9293. The main OGE FAX number is 202–482–9237.

§ 2600.103 Office of Government Ethics organization and functions.

(a) The Office of Government Ethics is divided into the following offices:

(1) The Office of the Director;

(2) The Office of General Counsel and Legal Policy;

(3) The Office of Government Relations and Special Projects;

(4) The Office of Agency Programs; and

(5) The Office of Administration and Information Management.

(b) *Office of the Director.* The Director of the Office of Government Ethics is appointed by the President and confirmed by the Senate. The Director advises the White House and executive branch Presidential appointees on Government ethics matters; maintains a liaison and provides guidance on ethics to executive branch departments and agencies; and oversees and coordinates all OGE rules, regulations, formal advisory opinions and major policy decisions. The Director also serves as a member of the President's Council on Integrity and Efficiency; the Executive Council on Integrity and Efficiency; the Integrity Committee; and on such other boards, councils, and committees as may be required by statute, Executive order or regulation. The Director represents the agency in various public outreach initiatives.

(c) *Office of General Counsel and Legal Policy.* (1) The Office of General Counsel and Legal Policy develops regulations and legislative proposals pertaining to conflict of interest statutes and standards of ethical conduct applicable to executive branch officers and employees, and executive branch public and confidential financial disclosure requirements. In addition, this Office provides advice and counseling to agency ethics officials through formal and informal advisory opinions, policy memoranda, and consultations. This Office also manages OGE's review and certification of financial disclosure reports filed by persons nominated by the President for positions requiring Senate confirmation; oversees the creation and operation of qualified and blind trusts and the issuance of certificates of divestiture; and responds to press inquiries.

(2) The General Counsel is the principal deputy of the Director of OGE.

(d) *Office of Government Relations and Special Projects.* The Office of Government Relations and Special Projects provides liaison to the Office of Management and Budget and to the Congress regarding legislative matters, coordinates OGE's support of U.S. Government efforts concerning international anticorruption and ethics initiatives, and is responsible for certain OGE special projects.

(e) *Office of Agency Programs.* (1) The Office of Agency Programs provides services to, and monitors, Federal executive branch agency ethics programs through three divisions: the Education Division, the Program Services Division, and the Program Review Division.

(i) The Education Division develops ethics-related, instructor-led and Web-based training programs for executive agency ethics officials. The division also develops training for ethics officials to deliver to their employees. The division conducts annual surveys to determine the training needs of ethics officials and

tailors its program to address those needs.

(ii) The Program Services Division is OGE's primary liaison to ethics officials in executive branch departments and agencies. Through its desk officers, the division assists ethics officials in developing, maintaining and improving all systems within their ethics programs. The division also discloses upon proper request copies of public financial disclosure reports that are filed with OGE, collects semiannual reports of payments accepted under 31 U.S.C. 1353, and works closely with ethics officials to ensure that annual and termination public financial disclosure reports and ethics agreements comply with ethics laws and regulations.

(iii) The Program Review Division monitors compliance with executive branch ethics laws and regulations in executive branch departments and agencies, regional offices, and military bases through on-site ethics program reviews. Reviews are conducted to identify and report strengths and weaknesses of agency ethics programs according to an annual program plan.

(2) In addition to the functions performed by its three divisions, the Office of Agency Programs holds an annual ethics conference and collects annual reports concerning certain aspects of agency ethics programs.

(f) *Office of Administration and Information Management.* The Office of Administration and Information Management provides support to all OGE operating programs through two divisions: The Administration Division and the Information Resources Management Division.

(1) The Administration Division is responsible for personnel, payroll, fiscal resource management, travel, procurement, and the publishing and printing of materials.

(2) The Information Resources Management Division is responsible for telecommunications, graphics, records management, program management of information, and Web site technologies.

[FR Doc. 03–17787 Filed 7–14–03; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV03–925–2 FIR]

Grapes Grown in a Designated Area of Southeastern California; Establishment of Safeguards and Procedures for Suspension of Packing Holidays

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which established safeguards and procedures for the suspension of packing holidays prescribed under the California grape marketing order (order). The order regulates the handling of grapes grown in a designated area of Southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). The procedures and safeguards will be used by the Committee when considering and making decisions on packing holiday suspension requests. Additionally, this rule continues in effect the clarification of existing maturity requirements for Flame Seedless variety grapes and the correction of errors in the regulatory text regarding references to the California Code of Regulations (CCR).

EFFECTIVE DATE: August 14, 2003.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect established safeguards and procedures for suspension of packing holidays prescribed under the California grape order. The explicitly stated procedures and safeguards will be used for all requests received to suspend packing holidays. Additionally, this rule continues in effect the clarification of existing maturity requirements for Flame Seedless variety grapes and the correction of errors in the regulatory text regarding references to the CCR.

Establishment of Safeguards and Procedures for Suspension of Packing Holidays

Section 925.52(a)(5) of the order's rules and regulations provides authority to establish holidays by prohibiting the packing of all varieties of grapes during a specified period or periods.

Previously, § 925.304(e) of the order's rules and regulations provided that the Committee may suspend the prohibition against packing or repacking grapes on any Saturday, Sunday, or on the Memorial Day or Independence Day holidays of each year, to permit the handling of grapes provided such

handling complies with procedures and safeguards specified by the Committee.

A decision by an Administrative Law Judge on November 7, 2002, invalidated the authority for the Committee to suspend or modify packing holidays, because there were no safeguards or procedures established for the Committee to follow when it makes its decisions on whether to suspend packing holidays.

As a result, the Committee met on December 12, 2002, and recommended specifying the following safeguards and procedures, including USDA approval, for the suspension of packing holidays to § 925.304(e) of the order's rules and regulations: (1) All requests for suspension of a packing holiday shall be in writing, shall state the reasons the suspension is being requested, and shall be submitted to the Committee manager by noon on Wednesday or at least 3 days prior to the requested suspension date; (2) Upon receipt of a written request, the Committee manager shall promptly give reasonable notice to producers and handlers and to USDA that an assembled Committee meeting will be held to discuss the request(s). A USDA representative shall attend the Committee meeting via speakerphone or in person, and all votes of the Committee members shall be cast in person; (3) The Committee members shall consider marketing conditions (*i.e.,* supplies of competing commodities including quantities in inventory, the expected demand conditions for grapes in different markets, and any pertinent documents which provide data on market conditions), weather conditions, labor shortages, the size of the crop remaining to be marketed, and other pertinent factors in reaching a decision on whether or not to suspend packing holidays; (4) Once a vote is taken, any documents utilized during the meeting will be forwarded immediately to the USDA representative and a summary of the Committee's action and reasons for recommending approval or disapproval will be prepared and also forwarded by the Committee; and (5) The USDA representative shall notify the Committee manager of approval or disapproval of the request prior to commencement of the suspended packing holiday and the Committee manager shall notify handlers and producers of USDA's decision.

In previous seasons, the Committee used informal safeguards and procedures when processing and considering requests to suspend packing holidays. The established safeguards and procedures, and USDA approval, are intended to address the concerns expressed in the administrative action. The Committee vote was 8 in favor, 0 opposed, and 1 abstained. The specific safeguards and procedures were added to § 925.304(e) of the order's administrative rules and regulations (68 FR 19708, April 22, 2003). These revisions do not impact the grape import regulation.

Clarification/Removal of Section Numbers

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods.

Prior to issuance of the interim final rule, § 925.304(a)(2) of the grape order's administrative rules and regulations provided that grapes of the Flame Seedless variety shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of the CCR. These provisions did not, but should have, specified that this variety of grapes also is considered mature under the grape marketing order if the juice meets or exceeds 16.5 percent soluble solids. To correct this oversight, the interim final rule added language to § 925.304(a)(2) indicating that Flame Seedless variety grapes shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids.

Prior to issuance of the interim final rule, § 925.304(b)(4) of the grape order's rules and regulations required containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specified that such requirement shall not apply to containers in the center tier of a 3 box by 3 box pallet configuration, as provided in §§ 1460.30 and 1359 of the CCR. The references to §§ 1460.30 and 1359 were incorrectly added to § 925.304(b)(4) on August 23, 2002 (67 FR 54567). This rule continues in effect the removal of these references from § 925.304(b)(4) and continues the addition of references to §§ 1436.30 and 1359 of the CCR to § 925.304(b)(3), as should have been done last August.

Section 925.304(f) states that certain container and pack requirements cited in the grape order are specified in the CCR and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register.**

Final Regulatory Flexibility Analysis

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

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

There are approximately 20 handlers of California grapes who are subject to regulation under the order and about 50 producers of grapes in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. Eight of the 20 handlers subject to regulation have annual grape sales of $5,000,000. In addition, 10 of the 50 producers have annual sales of at least $750,000. Therefore, a majority of handlers and producers are classified as small entities.

This rule continues in effect the establishment of safeguards and procedures for suspension of packing holidays prescribed under the California grape order. The specification of procedures and safeguards for suspending packing holidays are expected to facilitate the Committee's discussions and decision-making on such requests received from handlers. Additionally, this rule continues in effect the clarification of existing maturity requirements for Flame Seedless variety grapes and the correction of errors in regulatory text regarding references to the CCR.

Establishment of Safeguards and Procedures for Suspension of Packing Holidays

Prior to issuance of the interim final rule, § 925.304(e) of the order's rules and regulations provided that the Committee may suspend the prohibition against packing or repacking grapes on any Saturday, or Sunday, or on the Memorial Day or Independence Day holidays of each year, to permit the handling of grapes provided such

handling complies with procedures and safeguards specified by the Committee.

A decision issued by an Administrative Law Judge on November 7, 2002, invalidated the authority for the Committee to suspend or modify packing holidays, because there were no safeguards or procedures established for the Committee to follow when it makes its decisions on whether to suspend packing holidays.

As a result, the Committee met on December 12, 2002, and recommended specifying the following safeguards and procedures, including USDA approval, for suspension of packing holidays to § 925.304(e) of the order's rules and regulations to the handling of such requests: (1) All requests for suspension of a packing holiday shall be in writing, shall state the reasons the suspension is being requested, and shall be submitted to the Committee manager by noon on Wednesday or at least 3 days prior to the requested suspension date; (2) upon receipt of a written request, the Committee manager shall promptly give reasonable notice to producers and handlers and to USDA that an assembled Committee meeting will be held to discuss the request(s). A USDA representative shall attend via speakerphone or in person, and all votes of the Committee members on whether or not to approve the request shall be cast in person; (3) the Committee members shall consider marketing conditions (i.e., supplies of competing commodities including quantities in inventory, the expected demand conditions for grapes in different markets, and any pertinent documents which provide data on market conditions), weather conditions, labor shortages, the size of the crop remaining to be marketed, and other pertinent factors in reaching a decision to suspend or not suspend packing holidays; (4) once a vote is taken, any documents utilized during the meeting will be forwarded immediately to the USDA representative and a summary of the Committee's action and reasons for recommending approval or disapproval will be prepared and also forwarded by the Committee; and (5) the USDA representative shall notify the Committee manager of approval or disapproval of the requested prior to commencement of the suspended packing holiday and the Committee manager shall notify handlers and producers of USDA's decision.

In previous seasons, the Committee used informal safeguards and procedures when processing and considering requests to suspend packing holidays. The established safeguards and procedures, including USDA approval, are intended to address the concerns expressed in the administrative action. The Committee discussed alternatives to this change, including not making any changes, but determined that safeguards and procedures were needed to address the concerns expressed in the administrative action and to facilitate the handling of packing holiday suspension requests. The Committee vote was 8 in favor, 0 opposed, and 1 abstained. The specific safeguards and procedures were added to § 925.304(e) of the order's administrative rules and regulations (68 FR 19708, April 22, 2003). Imported grapes will not be affected by this action.

Clarification/Removal of Section Numbers

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods.

Previously, § 925.304(a)(2) of the grape order's administrative rules and regulations provided that grapes of the Flame Seedless variety shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of the Title 3: California Code of Regulations (CCR). These provisions did not, but should have, specified that this variety of grapes also is considered mature under the grape marketing order if the juice meets or exceeds 16.5 percent soluble solids. To correct this oversight, the interim final rule added language to § 925.304(a)(2) indicating that Flame Seedless variety grapes shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids.

Prior to issuance of the interim final rule, § 925.304(b)(4) of the grape order's rules and regulations required containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specified that such requirement shall not apply to containers in the center tier of a 3 box by 3 box pallet configuration, as provided in §§ 1460.30 and 1359 of the CCR. The references to §§ 1460.30 and 1359 were incorrectly added to § 925.304(b)(4) on August 23, 2002 (67 FR 54567). This rule continues in effect the removal of these references from § 925.304(b)(4) and continues the addition of references to §§ 1436.30 and 1359 of the CCR to § 925.304(b)(3), as should have been done last August.

Section 925.304(f) states that certain container and pack requirements cited in the grape order are specified in the CCR and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

This rule is in the interest of handlers, producers and consumers. These revisions do not impact the grape import regulation.

The information collection requirements for the safeguards and procedures for the suspension of packing holidays have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in the Committee's deliberations. The interim final rule (68 FR 19708, April 22, 2003) stated that this issue was discussed at Committee meetings held on November 14, 2002, and December 12, 2002. As this issue was not discussed at the November 14, 2002, meeting, that date has been deleted. Like all Committee meetings, the December 12, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on April 22, 2003. Copies of the rule were mailed by the Committee's staff to all Committee members and grape handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period, which ended June 23, 2003. No comments were received.

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

After consideration of all relevant material presented, including the

Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (68 FR 19708, April 22, 2003) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 925 which was published at 68 FR 19708 on April 22, 2003, is adopted as a final rule without change.

Dated: July 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–17798 Filed 7–14–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–4 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2002–03 Crop Natural (Sun-dried) Seedless and Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that established final volume regulation percentages for 2002–03 crop Natural (sun-dried) Seedless (NS) and Zante Currant (ZC) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 53 percent free and 47 percent reserve for NS raisins, and 80 percent free and 20 percent reserve for ZC raisins. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

EFFECTIVE DATE: Effective August 14, 2003. This rule applies to acquisitions of NS and ZC raisins from the 2002–2003 crop until the reserve raisins from that crop are disposed of under the order.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect final free and reserve percentages for NS and ZC raisins for the 2002–03 crop year, which began August 1, 2002, and ends July 31, 2003. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect final volume regulation percentages for 2002–03 crop NS and ZC raisins covered under the order. The percentages were established through an interim final rule published on April 2, 2003 (68 FR 15926). The volume regulation percentages are 53 percent free and 47 percent reserve for NS raisins, and 80 percent free and 20 percent reserve for ZC raisins. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. The Committee unanimously recommended ZC final percentages on January 29, 2003, and NS final percentages on February 13, 2003.

Computation of Trade Demands

Section 989.54 of the order prescribes procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 14, 2002, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's

shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year, and adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for NS raisins shall equal the total shipments of free tonnage during August and September for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three, or 60,000 natural condition tons, whichever is higher. For all other varietal types, including ZC raisins, the desirable carryout shall equal the total shipments of free tonnage during August, September and one-half of October for each of the past 5 crop years, converted to a natural condition basis, dropping the high and low figures, and dividing the remaining sum by three. In accordance with these provisions, the Committee computed and announced 2002–03 trade demands for NS and ZC raisins at 196,185 tons and 2,166 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	NS Raisins	ZC Raisins
Prior year's shipments	298,133	3,441
Multiplied by 90 percent	0.90	0.90
Equals adjusted base	268,320	3,097
Minus carryin inventory	132,135	1,910
Plus desirable carryout	60,000	978
Equals computed trade demand	196,185	2,166

Computation of Preliminary Volume Regulation Percentages

Section 989.54(b) of the order requires that the Committee announce, on or before October 5, preliminary crop estimates and determine whether volume regulation is warranted for the varietal types for which it computed a trade demand. That section allows the Committee to extend the October 5 date up to 5 business days if warranted by a late crop.

Due to a late 2002 crop, the Committee met on October 8, 2002, and announced a preliminary crop estimate for NS raisins of 407,996 tons, which is almost 18 percent higher than the 10-year average of 346,770 tons. NS raisins are the major varietal type of California raisin. Adding the carryin inventory of 132,135 tons, plus 18,000 tons of reserve raisins expected to be released to handlers this season for free use in an export program, plus the 407,996-ton crop estimate resulted in a total available supply of 558,131 tons, which was significantly higher (almost 285 percent) than the 196,185-ton trade demand. Thus, the Committee determined that volume regulation for NS raisins was warranted. The Committee announced preliminary free and reserve percentages for NS raisins, which released 65 percent of the computed trade demand since the field price (price paid by handlers to producers for their free tonnage raisins) had not been established. The preliminary percentages were 31 percent free and 69 percent reserve.

Also at its October 8, 2002, meeting, the Committee announced a preliminary crop estimate for ZC raisins at 4,544 tons, which is comparable to the 10-year average of 4,494 tons. Combining the carry-in inventory of 1,910 tons with the 4,544-ton crop estimate resulted in a total available supply of 6,454 tons. With the estimated supply significantly higher (almost three times) than the 2,166-ton trade demand, the Committee determined that volume regulation for ZC raisins was warranted. The Committee announced preliminary percentages for ZC raisins, which released 65 percent of the computed trade demand since field price had not been established. The preliminary percentages were 31 percent free and 69 percent reserve.

Field prices for both NS and ZC raisins were established on January 10, 2003, and preliminary percentages were revised on January 13, 2003, to 41 percent free and 59 percent reserve for NS and ZC raisins to release 85 percent of their trade demands.

In addition, preliminary percentages were announced for Other Seedless, Dipped Seedless, and Oleate and Related Seedless. It was ultimately determined that volume regulation was only warranted for NS and ZC raisins. As in past seasons, the Committee submitted its marketing policy to USDA for review.

Modification To Marketing Policy Regarding ZC Raisins

Pursuant to § 989.54(f) of the order, the Committee met on January 29, 2003, and revised its marketing policy regarding ZC raisins due to a major change in economic conditions. The Committee recommended, and USDA subsequently approved, an increase in the ZC trade demand from 2,166 to 3,302 tons. The Committee's rationale for this action was to take advantage of increased demand created by a short Greek crop. Greece's crop has been reduced due to adverse weather conditions, and the Committee hopes to be able to sell more California ZC raisins in world markets.

Computation of Final Volume Regulation Percentages

Pursuant to § 989.54(c), at its January 29, 2003, meeting, the Committee announced interim percentages for NS and ZC raisins to release slightly less than their full trade demands. Based on a revised NS crop estimate of 373,138 tons (down from the October estimate of 407,996 tons), interim percentages for NS raisins were announced at 52.75 percent free and 47.25 percent reserve. Based on a revised ZC crop estimate of 4,128 tons (down from the October estimate of 4,544 tons), interim percentages for ZC raisins were announced at 79.75 percent free and 20.25 percent reserve.

Pursuant to § 989.54(d), the Committee also recommended final percentages to release the full trade demands for NS and ZC raisins. Final percentages were recommended for ZC raisins at the Committee's January meeting at 80 percent free and 20 percent reserve. Final percentages for NS raisins were recommended by the Committee at a meeting on February 13, 2003, at 53 percent free and 47 percent reserve, based on a revised crop estimate of 373,680 tons (slightly up from the January estimate of 373,138 tons). The Committee's calculations to arrive at final percentages for NS and ZS raisins are shown in the table below:

FINAL VOLUME REGULATION PERCENTAGES

[Natural condition tons]

	NS Raisins	ZC Raisins
Trade demand	196,185	3,302
Divided by crop estimate	[1] 373,680	[2] 4,128
Equals free percentage	53	80
100 minus free percentage equals reserve percentage	47	20

[1] The crop estimate for NS raisins is underestimated, as acquisitions through the week ending April 26, 2003, were 385,575 tons.
[2] The crop estimate for ZC raisins is underestimated, as acquisitions through the week ending April 26, 2003, were 4,356 tons.

In addition, USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for NS and ZS raisins by the establishment of final percentages, which released 100 percent of the trade demands and the offer of additional reserve raisins for sale to handlers under the ''10 plus 10 offers.'' As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins, which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

For NS raisins, the first ''10 plus 10 offer'' was made in February 2003, and the second offer was made in May 2003. A total of 59,626 tons was made available to raisin handlers through these offers, and 56,796 tons were purchased. Adding the total figure of 56,796 tons of 10 plus 10 raisins to the 385,575 tons of free tonnage raisins acquired by handlers from producers through the week ending April 26, 2003, plus 132,135 tons of 2002–03 carryin inventory, plus 18,000 tons of reserve raisins released during the season through an export program, equates to 592,506 tons of natural condition raisins, or 556,108 tons of packed raisins, that are available to handlers for free use or primary markets. This is almost 200 percent of the quantity of NS raisins shipped during the 2001–02 crop year (298,133 natural condition tons or 279,819 packed tons).

For ZC raisins, both ''10 plus 10 offers'' were held simultaneously in February 2003. A total of 688 tons was made available to handlers, and all of the raisins were purchased. Adding the 688 tons of 10 plus 10 raisins to the 4,356 tons of free tonnage raisins acquired by handlers from producers through the week ending April 26, 2003, plus 1,910 tons of 2002–03 carryin inventory equates to 6,954 tons of natural condition raisins, or 6,147 tons of packed raisins, available to handlers for free use or primary markets. This is over 200 percent of the quantity of ZC raisins shipped during the 2001–02 crop year (3,441 tons natural condition tons or 3,043 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, the additional offers of reserve raisins make even more raisins available to primary markets, which is consistent with USDA's Guidelines.

Final Regulatory Flexibility Analysis

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

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

Since 1949, the California raisin industry has operated under a Federal marketing order. The order contains authority to, among other things, limit the portion of a given year's crop that can be marketed freely in any outlet by raisin handlers. This volume control mechanism is used to stabilize supplies and prices and strengthen market conditions.

Pursuant to § 989.54(d) of the order, this rule continues in effect final volume regulation percentages for 2002–03 crop NS and ZC raisins. The volume regulation percentages are 53 percent free and 47 percent reserve for NS raisins, and 80 percent free and 20 percent reserve for ZC raisins. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season for NS raisins because acquisitions of 385,575 tons through the week ending April 26, 2003, combined with the carryin inventory of 132,135 tons, plus 19,700 tons of reserve raisins released for free use through an export program, results in a total available supply of 537,410 tons, which is about 274 percent higher than the 196,185-ton trade demand. Volume regulation is warranted for ZC raisins this season because acquisitions of 4,356 tons through the week ending April 26, 2003, combined with the carryin inventory of 1,910 tons results in a total available supply of 6,266 tons, which is almost twice the 3,302-ton trade demand.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and

strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help reduce the burden of oversupplies in the domestic market.

Raisin grapes are a perennial crop, so production in any year is dependent upon plantings made in earlier years. The sun-drying method of producing raisins involves considerable risk because of variable weather patterns.

Even though the product and the industry are viewed as mature, the industry has experienced considerable change over the last several decades. Before the 1975–76 crop year, more than 50 percent of the raisins were packed and sold directly to consumers. Now, over 60 percent of raisins are sold in bulk. This means that raisins are now sold to consumers mostly as an ingredient in another product such as cereal and baked goods. In addition, for a few years in the early 1970's, over 50 percent of the raisin grapes were sold to the wine market for crushing. Since then, the percent of raisin-variety grapes sold to the wine industry has decreased. In addition, the price wineries have offered for raisin grapes has dropped to $65 per ton.

California's grapes are classified into three groups—table grapes, wine grapes, and raisin-variety grapes. Raisin-variety grapes are the most versatile of the three types. They can be marketed as fresh grapes, crushed for juice in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. This type of situation introduces a certain amount of variability into the raisin market. Although the size of the crop for raisin-variety grapes may be known, the amount dried for raisins depends on the demand for crushing. This makes the marketing of raisins a more difficult task. These supply fluctuations can result in producer price instability and disorderly market conditions.

Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, producer prices for NS raisins remained fairly steady between the 1992–93 through the 1997–98 seasons, although production varied. As shown in the table below, during those years, production varied from a low of 272,063 tons in 1996–97 to a high of 387,007 tons in 1993–94, or about 114,944 tons. According to Committee data, the total producer return per ton during those years, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or $148. Total producer prices for the 1998–99 and 1999–2000 seasons increased significantly due to back-to-back short crops during those years. Producer prices dropped dramatically for the last two seasons due to record-size production and large carry-in inventories.

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Deliveries (natural condition tons)	Producer prices (per ton)
2001–02	377,328	[1] $663.95
2000–01	432,616	570.82
1999–2000	299,910	1,211.25
1998–99	240,469	[2] 1,290.00
1997–98	382,448	946.52
1996–97	272,063	1,049.20
1995–96	325,911	1,007.19
1994–95	378,427	928.27
1993–94	387,007	904.60
1992–93	371,516	901.41

[1] Return-to-date, reserve pool still open.
[2] No volume regulation.

There are essentially two broad markets for raisins—domestic and export. In recent years, both export and domestic shipments have been decreasing. Domestic shipments decreased from a high of 204,805 packed tons during the 1990–91 crop year to a low of 156,325 packed tons in 1999–2000. In addition, exports decreased from 114,576 packed tons in 1991–92 to a low of 91,600 packed tons in the 1999–2000 crop year.

In addition, the per capita consumption of raisins has declined from 2.07 pounds in 1988 to 1.46 pounds in 2001. This decrease is consistent with the decrease in the per capita consumption of dried fruits in general, which is due to the increasing availability of most types of fresh fruit throughout the year.

While the overall demand for raisins has been decreasing (as reflected in the decline in commercial shipments and per capita consumption), production has been increasing. Deliveries of NS dried raisins from producers to handlers reached an all-time high of 432,616 tons in the 2000–01 crop year. This large crop was preceded by two short crop years; deliveries were 240,469 tons in 1998–99 and 299,910 tons in 1999–2000. Deliveries for the 2000–01 crop year soared to a record level because of increased bearing acreage, increased yields, and growers drying more grapes for raisins. Deliveries for the 2001–02 crop year were at 377,328 tons, and deliveries through April 26, 2003, for the current year were at 385,575 tons. Three crop years of high production and a large 2002–03 carryin inventory has contributed to the industry's burdensome supply of raisins.

This type of surplus situation leads to serious marketing problems. Handlers compete against each other in an attempt to sell more raisins to reduce inventories and to market their crop. This situation puts downward pressure on growers' prices and incomes.

The order permits the industry to exercise supply control provisions, which allow for the establishment of free and reserve percentages, and establishment of a reserve pool. One of the primary purposes of establishing free and reserve percentages is to equilibrate supply and demand. If raisin markets are over-supplied with product, producer prices will decline.

Raisins are generally marketed at relatively lower price levels in the more elastic export market than in the more

inelastic domestic market. This results in a larger volume of raisins being marketed and enhances producer returns. In addition, this system allows the U.S. raisin industry to be more competitive in export markets.

To assess the impact that volume control has on the prices producers receive for their product, an econometric model has been constructed. The model developed is for the purpose of estimating nominal prices under a number of scenarios using the volume control authority under the Federal marketing order. The price producers receive for the harvest and delivery of their crop is largely determined by the level of production and the volume of carryin inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of reserve and free percentages for primary markets, and a reserve pool. The establishment of reserve percentages impacts the production that is marketed in the primary markets.

The reserve percentage limits what handlers can market as free tonnage. Assuming the 53 percent reserve limits the total free tonnage to 204,355 natural condition tons (.53 × 385,575 tons delivered through April 26, 2003) and carryin is 132,135 natural condition tons, and purchases from reserve total 79,326 natural condition tons (which includes anticipated reserve raisins released through the export program and other purchases), then the total free supply is estimated at 415,816 natural condition tons. The econometric model estimates prices to be $142 per ton higher than under an unregulated scenario. This price increase is beneficial to all producers regardless of size and enhances producers' total revenues in comparison to no volume control. Establishing a reserve allows the industry to help stabilize supplies in both domestic and export markets, while improving returns to producers.

Regarding ZC raisins, ZC raisin production is much smaller than NS raisin production. Volume regulation has been implemented for ZC raisins during the 1994–95, 1995–96, 1997–98, 1998–99, 1999–2000, and 2000–01 seasons. Various programs to utilize reserve pool ZC raisins were implemented during those years. As shown in the table below, although production varied during those years, volume regulation helped to reduce inventories, and helped to strengthen total producer prices (free tonnage plus reserve ZC raisins) from $412.56 per ton in 1994–95 to a high of $1,034.03 per ton in 1998–99. The Committee is implementing an export program for ZC raisins, in addition to NS raisins. Through this program, the Committee plans to continue to manage its ZC supply, build and maintain export markets, and ultimately improve producer returns. Volume regulation helps the industry not only to manage oversupplies of raisins, but also maintain market stability.

ZC INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION

[Natural condition tons]

Crop year	Deliveries	Inventory		Producer prices (per ton)
		Desirable	Physical	
2001–02	4,213	1,227	1,395	[1] $1,000.00
2000–01	4,848	1,227	1,109	851.55
1999–2000	3,683	573	1,906	669.14
1998–99	3,880	694	1,188	1,034.03
1997–98	4,826	788	1,679	710.08
1996–97	4,491	987	549	[2] 1,150.00
1995–96	3,294	782	2,890	711.32
1994–95	5,377	837	4,364	412.56

[1] and [2] No volume regulation.

Free and reserve percentages are established by varietal type, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, it has been determined that volume regulation is warranted this season for only two of the ten raisin varietal types defined under the order.

The free and reserve percentages established by this rule release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For NS raisins, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action imposes no additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

An interim final rule concerning this action was published in the **Federal Register** on April 2, 2003 (68 FR 15926). Copies of the rule were mailed to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended on June 2, 2003. No comments were received.

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

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

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 68 FR 15926 on April 2, 2003, is adopted as a final rule without change.

Dated: July 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–17799 Filed 7–14–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15454; Airspace Docket No. 03–ACE–52]

Modification of Class E Airspace; Wichita Mid-Continent Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) modifies the Wichita Mid-Continent Airport, KS Class E airspace area. The FAA has developed an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) and an amended VHF Omni-directional Range (VOR) SIAP to serve Cessna Aircraft Field, Wichita, KS. The Wichita Mid-Continent Airport, KS Class E airspace area encompasses that Class E airspace designed to protect aircraft executing SIAPs into Cessna Aircraft Field. This action modifies the Wichita Mid-Continent Airport, KS Class E airspace area to the appropriate dimensions for protecting aircraft executing these newly developed instrument approach procedures. An examination of controlled airspace for Wichita Mid-Continent Airport, KS has revealed several discrepancies in the Wichita Mid-Continent Airport, KS Class E airspace area. This action corrects the discrepancies by modifying the airspace area and its legal description.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, October 30, 2003. Comments for inclusion in the rules Docket must be received on or before August 20, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15454/Airspace Docket No. 03–ACE–52, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV (GPS)—D ORIGINAL SIAP and VOR—C AMENDMENT 1 SIAP to serve Cessna Aircraft Field, Wichita, KS. The Wichita Mid-Continent Airport, KS Class E airspace area encompasses that Class E airspace designed to protect aircraft executing SIAPs into Cessna Aircraft Field. This action modifies the Wichita Mid-Continent Airport, KS Class E airspace area to the appropriate dimension for protecting aircraft executing these newly developed/amended instrument approach procedures. As a result, Cessna Aircraft Field airport reference is no longer required in the Wichita Mid-Continent Airport, KS Class E airspace legal description. An examination of controlled airspace for Wichita Mid-Continent Airport, KS Class E airspace area. The locations of Wichita Mid-Continent Localizer Runway 1L, Wichita McConnell Air Force Base (AFB) Localizer Runway 1L and AUBRA Waypoint, all of which are used in the legal description of this airspace area, have been redefined. Portions of the airspace area description in the vicinity of McConnell AFB were omitted in the previous publication. This action corrects the discrepancies by modifying the airspace area and its legal description. This amendment to 24 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Wichita Mid-Continent Airport, KS. It also brings the legal descriptions of this airspace area into compliance with FAA Order 7400.2E, Procedures for handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace area extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15454/Airspace Docket No. 03–ACE–52.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 20, 2002, and effective September 16, 1002, is amended as follows:

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

* * * * *

ACE KS E5 Wichita Mid-Continent Airport, KS.

Wichita Mid-Continent Airport, KS,
(Lat. 37°39′00″ N., long. 97°25′59″ W.)
Wichita Mid-Continent Localizer Runway 1L,
(Lat. 37°39′51″ N., long. 97°25′57″ W.)
Wichita McConnell Air Force Base, KS,
(Lat. 37°37′33″ N., long. 97°16′03″ W.)
Wichita McConnell Air Force Base Localizer Runway 1L,
(Lat. 37°38′32″ N., Long. 97°15′50″ W.)
Wichita Colonel James Jabara Airport, KS,
(Lat. 37°44′51″., long. 97°13′16″ W.)
Augusta Municipal Airport, KS,
(Lat. 37°40′18″ long. 97°04′40″ W.)
AUBRA Waypoint,
(Lat. 37°55′14″ N., long. 97°11′13″ W.)

The airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Wichita Mid-Continent Airport and within 4 miles west east of the Mid-Continent Airport ILS localizer course to runway 1L extending from the airport to 13 miles south of the airport and to 7.4 miles north of the airport and within a 7.0 mile radius of the McConnell Air force Base (AFB) and within 1.8 miles each side of the McConnell AFB ILS runway 1L localizer course extending from the AFB to 11.2 miles south of the AFB and within a 6.4-mile radius of the Augusta Municipal Airport and within a 6.5 mile radius of the Colonel James Jabrar Airport and within 1.8 miles each side of a lone extending from the Colonel James Jabara Airport to the AUGRA Waypoint extending from the 6.5-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on June 30, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Davison, Central Region.

[FR Doc. 03–17766 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15455; Airspace Docket No. 03–ACE–53]

Modification of Class E Airspace; Sioux Center, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

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

DATES: This direct final rule is effective on 0901 UTC, October 30, 2003. Comments for inclusion in the Rules Docket must be received on or before August 21, 2003.

ADDRESSES: Send comments on its proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15455/Airspace Docket No. 03–ACE–53, at the beginning of your comments. You may also submit comments on the Internet at *http://dms/dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal

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

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Sioux Center, IA. An examination of controlled airspace for Sioux Center, IA revealed discrepancies in the Sioux Center Municipal Airport airport reference point, computation of required controlled airspace and appropriate application of magnetic variation. This amendment incorporates the revised Sioux Center Municipal Airport airport reference point, redefines Class E airspace around Sioux Center Municipal Airport at the 6.5-mile radius versus the 6-mile radius, applies the appropriate magnetic variation to the Class E airspace extension and brings the legal description of the Sioux Center, IA Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface on the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comment on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FA–2003–15455/Airspace Docket No. 03–ACE–53.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2003, and effective September 16, 2002, is amended as follows:

* * * * *

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

* * * * *

ACE IA E5 Sioux Center, IA.

Sioux Center Municipal Airport, IA
(Lat. 43°08′04″ N., long. 96°11′15″ W.)
Sioux Center NDB,
(Lat. 43°07′59″ N., long. 96°11′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Sioux Center Municipal Airport and within 2.6 miles each side of the 005° bearing from the Sioux Center NDB extending from the 6.5-mile radius to 7.4 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on June 30, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–17765 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15077; Airspace Docket No. 03–ACE–45]

Modification of Class E Airspace; Pocahontas, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that

was published in the **Federal Register** on Friday, May 23, 2003, (68 FR 28121) [FR Doc. 03–13047]. It corrects an error in the dimension and legal description of the Pocahontas, IA Class E airspace area.

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

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

SUPPLEMENTARY INFORMATION:

History

Federal Register document 03–13047, published on Friday, May 23, 2003, (68 FR 28121) modified Class E airspace at Pocahontas, IA. The modification was to correct the Pocahontas Municipal Airport, IA airport reference point used in the legal description of the Pocahontas, IA Class E airspace area and to bring the airspace area into compliance with FAA Order 7400.2E, Procedures for handling Airspace Matters. The information published, however, did not correct a previous error in the volume of Class E airspace necessary at Pocahontas, IA and did not bring the airspace area into compliance with the order. This action rectifies the oversight and does bring the Pocahontas, IA Class E airspace into compliance with FAA Order 7400.2E.

■ Accordingly, pursuant to the authority delegated to me, the Pocahontas, IA Class E airspace, as published in the **Federal Register** on Friday, May 23, 2003, (68 FR 28121), [FR Doc. 03–13047] is corrected as follows:

§ 71.1 [Corrected]

■ On page 28122, Column 1, last paragraph, second and fifth lines from bottom, change ''6-mile radius'' to read ''6.4-mile radius.''

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

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–17764 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15456; Airspace Docket No. 03–ACE–54]

Modification of Class E Airspace; Vinton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

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

DATES: This direct final rule is effective on 0901 UTC, October 30, 2003. Comments for inclusion in the Rules Docket must be received on or before August 21, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15456/ Airspace Docket No. 03–ACE–54, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

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

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–15456/Airspace Docket No. 03–ACE–54.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE IA E5 Vinton, IA.

Vinton Veterans Memorial Airpark, IA

(Lat. 42°13′07″ N., long. 92°01′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Vinton Veterans Memorial Airpark.

* * * * *

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

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–17763 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15080; Airspace Docket No. 03–ACE–48]

Modification of Class E Airspace; Sibley, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Friday, May 23, 2003, (68 FR 28126) [FR Doc. 03–13040]. It corrects an error in the dimension and legal description of the Sibley, IA Class E airspace area.

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

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–13040, published on Friday, May 23, 2003, (68 FR 28126) modified Class E airspace at Sibley, IA. The modification was to correct the Sibley Municipal Airport, IA airport reference point used in the legal description of the Sibley, IA Class E airspace area and to bring the airspace area into compliance with FAA Order 7400.2E, Procedures for handling Airspace Matters. The information published, however, did not correct a previous error in the volume of Class E airspace necessary at Sibley, IA and did not bring the airspace area into compliance with the order. This action rectifies the oversight and does bring the Sibley, IA Class E airspace into compliance with FAA Order 7400.2E.

■ Accordingly, pursuant to the authority delegated to me, the Sibley, IA Class E airspace, as published in the **Federal Register** on Friday May 23, 2003, (68 FR 28126), [FR Doc. 03–13040] is corrected as follows:

§ 71.1 [Corrected]

■ On page 28127, Column 1, second paragraph, sixth and ninth lines after heading ''ACE IA E5 Sibley, IA,'' change ''6-mile radius'' to read ''6.3-mile radius.''

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

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–17762 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15078; Airspace Docket No. 03–ACE–46]

Modification of Class E Airspace; Red Oak, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Friday, May 23, 2003, (68 FR 28123) [FR Doc. 03–13045]. It corrects an error in the dimension and legal description of the Red Oak, IA Class E airspace area.

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

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–13045, published on Friday, May 23, 2003, (68 FR 28123) modified Class E airspace at Red Oak, IA. The modification was to correct the Red Oak Municipal Airport, IA airport reference point used in the legal description of the Red Oak, IA Class E airspace area and to bring the

airspace area into compliance with FAA Order 7400.2E, Procedures for handling Airspace Matters. The information published, however, did not correct a previous error in the volume of Class E airspace necessary at Red Oak, IA and did not bring the airspace area into compliance with the order. This action rectifies the oversight and does bring the Red Oak, IA Class E airspace into compliance with FAA Order 7400.2E.

■ Accordingly, pursuant to the authority delegated to me, the Red Oak, IA Class E airspace, as published in the **Federal Register** on Friday, May 23, 2003, (68 FR 28123), [FR Doc. 03–13045] is corrected as follows:

§ 71.1 [Corrected]

■ On page 28124, Column 3, second paragraph, sixth and ninth lines after heading ''ACE IA E5 Red Oak, IA,'' change ''6-mile radius'' to read ''6.4-mile radius.''

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

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–17761 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15079; Airspace Docket No. 03–ACE–47]

Modification of Class E Airspace; Sac City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Friday, May 23, 2003, (68 FR 28127) [FR Doc. 03–13039]. It corrects an error in the dimension and legal description of the Sac City, IA Class E airspace area.

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

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–13039, published on Friday, May 23, 2003, (68 FR 28127) modified Class E airspace and Sac City, IA. The modification was to correct discrepancies in the Sac City Municipal Airport, IA airport reference point and the location of the Sac City nondirectional radio beacon, both used in the legal description of the Sac City, IA Class E airspace area. These corrections were to bring the airspace area into compliance with FAA Order 7400.2E, Procedures for handling Airspace Matters. The information published, however, did not correct a previous error in the volume of Class E airspace necessary at Sac City, IA and did not bring the airspace area into compliance with the order. This action rectifies the oversight and does bring the Sac City, IA Class E airspace into compliance with FAA Order 7400.2E.

■ Accordingly, pursuant to the authority delegated to me, the Sac City, IA Class E airspace, as published in the **Federal Register** on Friday, May 23, 2003, (68 FR 28127), [FR Doc. 03–13039] is corrected as follows:

§ 71.1 [Corrected]

■ On page 28127, Column 1, sixth paragraph, sixth and ninth lines after heading ''ACE IA E5 Sac City, IA,'' change ''6-mile radius'' to read ''6.4-mile radius.''

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

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–17760 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending interim rules on the supervision of District of Columbia offenders who are serving terms of supervised release imposed by the Superior Court of the District of Columbia. This publication sets out all of the Commission's rules on D.C. supervised release cases, first promulgated as interim rules in November, 2000, and includes rules promulgated in January, 2003 on revocation procedures for supervised releasees, and new provisions regarding the conditions of supervision and the appeal of supervised release revocation decisions.

With the promulgation of these amended interim rules for D.C. supervised releasees, the Commission is also making revisions to several rules for federal offenders and D.C. parolees in order to maintain consistent procedures and reduce duplicative rules. The rule describing the administrative appeal procedure for federal offenders is revised to include certain requirements regarding the formatting of the appeal. The Commission is also revising the rules describing the conditions of supervision for federal and D.C. parolees in an effort to reduce duplicative rules and make the conditions easier to read and understand. These amendments are also promulgated as interim rules.

The interim rules also contain a number of amendments to the citations to the District of Columbia Code made necessary as a result of a recodification of D.C. criminal laws.

DATES: Effective Date: August 14, 2003. Comments must be received by November 12, 2003.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd, Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: In the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub.L. 105–33, Congress assigned to the U.S. Parole Commission the task of carrying out supervised release terms imposed for D.C. felony offenders by the Superior Court of the District of Columbia. D.C. Code 24–133(c)(2). The Commission was given the same authority over D.C. supervised releasees as is exercised by U.S. District Courts over federal supervised releasees under 18 U.S.C. 3583, except that any extension of a term of supervised release imposed by the Superior Court must be ordered by the Superior Court, not the Commission. Further, the Revitalization Act specifies that the procedures to be followed by the Commission in exercising its authority over D.C. supervised releasees are the procedures applicable to federal parolees under the Parole Commission and Reorganization Act of 1976, as set forth in Chapter 311 of Title 18, United States Code.

In November, 2000, the Commission published interim rules governing its

functions for D.C. supervised releasees and requested comments on the rules. 65 FR 70466–78 (Nov. 24, 2000). Given the expected similarity between the parolee population and those D.C. offenders to be placed on supervised release, for the most part the interim rules simply carried over rules developed for parolees based on the Commission's long experience with this offender population. Of course, the Commission was required to promulgate rules that implemented any laws that were unique to supervised releasees, in particular the restrictions on the sanctions that may be imposed on offenders whose supervised release terms were revoked. *See* 28 CFR 2.218–2.219.

The Commission did make several policy choices in its interim rules for supervised release revocation decisions and is continuing these policies in the amended interim rules. The Commission will continue to use the reparole guidelines at § 2.21 as the appropriate standard for determining the length of a prison term for a supervised release violator when the Commission has revoked supervised release. The Commission has employed these guidelines to make reparole decisions for D.C. parole violators because the regulations of the former D.C. Board of Parole provided no policy guidance on reparole decisions. 63 FR 39175 (July 21, 1998). The guidelines at § 2.21 represent the Commission's policy judgments as to the appropriate balancing of factors such as accountability for the violation behavior, incapacitation, and deterrence in determining prison term sanctions for criminal violations and other misconduct on supervision.

In comparing the guideline ranges of § 2.21 against the maximum prison terms allowed as a part of a supervised release revocation decision under D.C. Code 24–403.01(b)(7) (incorporated in § 2.219 of the rules), it is apparent that the minimum of the § 2.21 range will frequently exceed the maximum permissible term of imprisonment for a violator who commits a serious crime while under supervision. The amended interim rule addresses this issue by providing that, when the maximum authorized term of imprisonment under § 2.219 is less than the minimum of the § 2.21 guideline range, the ''guideline range'' is the maximum authorized term of imprisonment, not the range found in § 2.21. This instruction is analogous to the directions found in the U.S. Sentencing Guidelines, § 5G.1.1(a) and § 7B1.4(b)(1). For the large number of release violators who commit administrative violations or less serious crimes, the § 2.21 guidelines will ensure decision-making consistency in prison term determinations. The Commission's statistics regarding decision-making under the § 2.21 guidelines for D.C. parole violators since August, 2000 to the present show that 80% of the cases received offense severity ratings of Category Three or less, with 60% receiving a rating of Category One. In 63% of the cases, the violator received a prison term of 24 months or less for the violation. Since the Commission anticipates that D.C. supervised releasees, as a group, will be substantially similar to D.C. offenders on parole, there is no reason to believe that these statistics will be markedly different for D.C. supervised releasees.

The Commission is also maintaining the general policy to impose, whenever possible, the maximum permissible term of supervised release for an offender as a consequence of the revocation of an earlier supervised release term. 28 CFR 2.218(e). This policy is based on the Commission's judgment that, for most cases, a supervised release violator has, by virtue of committing violations serious enough to justify revocation, thereby evidenced the need for further supervision to the limits provided by law.

The amended interim rules also clarify the Commission's interpretation of a law governing the running of a supervised release term, how the Commission will handle actions regarding multiple terms of supervised release, and the sequence of revocation proceedings for an offender serving concurrent terms of parole and supervised release. The statutory interpretation concerns D.C. Code 24–403.01(b)(5), which provides that a term of supervised release does not run during any period of 30 days or more in which the offender is imprisoned in connection with a conviction for a federal, state, or local crime. The rule at § 2.201 interprets this law to preclude the running of a supervised release term while the offender is serving a term of imprisonment resulting from a probation, parole, or supervised release revocation on another sentence. The offender's imprisonment as a release violator is clearly ''in connection with a conviction'' because the conviction on which the offender was granted probation, parole, or supervised release is the ultimate source of authority for revoking the release and imprisoning the offender. The rule at § 2.201 also incorporates the provision at D.C. Code 24–403.01(b)(5) that a term of supervised release runs concurrently with other terms of supervision in the community, including a supervised release term imposed for another offense.

With regard to the Commission's policies concerning an offender serving multiple terms of supervised release, the amended interim rule retains the provision that the longest term imposed determines the duration of the Commission's jurisdiction over such an offender, and the policy that the multiple terms will be considered as aggregated. A decision to terminate the offender from supervision or to revoke supervised release shall have the effect of terminating or revoking all terms of supervised release being served by the offender at the time of the Commission's order. In imposing the sanctions that result from revocation, the Commission shall treat the offender as if the Commission had revoked a single term of supervised release. The reason for using this aggregation approach for imposing revocation sanctions is largely one of administrative efficiency. Making separate calculations of terms of imprisonment and subsequent supervised release for the revocation of multiple supervised release terms, and then reducing these multiple calculations to an understandable revocation decision would be an extremely difficult task. The amended interim rule also clarifies that in calculating the original maximum authorized term of supervised release and the maximum authorized term of imprisonment at the first revocation, the Commission shall use as its guide the sentence for the offense that is punishable by the longest prison term authorized by the D.C. Code. The Commission believes this interpretation of the statutory scheme best accords with legislative intent because the sanctions authorized by statutory law for supervised release revocation are dictated by the maximum statutory penalty for the crime that led to the original sentence. See D.C. Code 24–403.01(b)(7). Finally, with regard to the offender who is subject to revocation of parole and supervised release terms, the rule at § 2.211(g) clarifies that the Commission has the discretion to revoke both parole and supervised release at a combined hearing or at separate hearings, and may postpone the sanction for revocation of one term until the offender satisfies the prison term imposed as a revocation sanction regarding the other term. If the Commission chooses to conduct separate hearings, the first revocation hearing will resolve any contested violations so that the subsequent hearing may be conducted on the same

violation behavior as an institutional hearing without the need to require the attendance of adverse or necessary witnesses.

Since the publication of the interim rules in November, 2000, the Commission promulgated rule changes to the Commission's procedures for revoking paroles granted to D.C. offenders in order to implement a consent decree resolving class action litigation in the U.S. District Court for the District of Columbia. *See* 68 FR 3389–92 (Jan. 24, 2003). Though supervised releasees were not members of the plaintiff class in the litigation, the Commission extended the revised procedures to supervised releasees because the new rules represented the most efficient revocation system and the best means of protecting the public safety. *Id.* at 3389. These revocation procedures are included in the amended interim rules.

Recently the Commission published as proposed rules with request for comment revisions of three regulations describing the conditions of supervision for federal parolees, D.C. parolees, and D.C. supervised releasees. 68 FR 16743–46 (Apr. 7, 2003). These proposed rules consolidated similar provisions for the three groups of offenders, using the rule governing conditions of supervised release as the rule for the full statement of applicable conditions, and then placing cross-references to this rule in the provisions for federal parolees and D.C. parolees. *Id.* at 16744. The Commission is now adopting these rules on the release conditions as interim rules with changes that are mostly editorial in nature.

One amendment to the proposed rules adds a general condition that, upon receiving a direction from the supervision officer, the releasee must notify a person, normally an employer, of a risk of harm that may be evidenced by the releasee's criminal record or personal history, and permit the officer to confirm that the releasee gave the required notice. This condition also authorizes the supervision officer to provide notice of possible risk to the third party if the notification is authorized by the Commission's rules. The Commission already authorizes disclosure of risk of harm to persons in the rule at § 2.37(a) and companion rules for D.C. parolees and supervised releasees. The standard conditions of supervised release recommended for federal offenders includes a similar condition. U.S. Sentencing Guidelines, § 5D1.3(c)(13). When the supervision officer determines that a disclosure of risk of harm is appropriate, this additional condition is another step toward ensuring that the releasee is adequately supervised in the community, and that the recipient of the notice is sufficiently informed of the releasee's background so as not to place the releasee in a position that may increase the risk of future criminal behavior by the releasee, or to take suitable precautions in dealing with the releasee. Another amendment to the proposed rules restores a current reporting instruction for an offender who is delayed by an emergency in making his initial visit to the supervision office. The instruction from the current rule—that the offender report to the nearest U.S. Probation Office if he cannot timely report to his designated supervision office—is retained to be consistent with written directions that are given to the offender by the Bureau of Prisons upon the offender's discharge from the institution. Finally, another amendment implements statutory provisions on mandatory revocation of a supervised release term if the Commission finds that the releasee has committed certain violations (*e.g.*, possession of a firearm or repeated positive test results for drug use). *See* 18 U.S.C. 3583(g).

The amended interim rules also add an appeal procedure for supervised release revocation decisions at § 2.220. Up to now, the Commission has not included an appeal procedure for any of the decisions it makes for D.C. offenders. In past publications of procedural rules for D.C. offenders, the Commission has acknowledged concerns that D.C. offenders have not been given the opportunity to file administrative appeals regarding parole release and parole revocation decisions. *See* 65 FR 45886 (July 26, 2000). The Commission has explained that it does not have the staff resources to review appeals submitted by D.C. offenders, and that the additional review that is afforded by the appeal procedure is effectively obtained by having two Commissioners vote at the initial stage of decision-making.

However, the Commission has decided that there are several reasons to establish an administrative appeal procedure limited to supervised release revocation decisions. First, though the Commission has considerable experience in executing the similar function of parole revocation, the statutes governing supervised release revocation decisions impose complex and unfamiliar limits when the Commission revokes supervised release and then must determine the length of a term of imprisonment and a subsequent term of supervised release. An appeal procedure for supervised release revocations is an additional administrative safeguard in the agency's effort to ensure error-free decision-making in carrying out this new function. Second, the number of supervised release revocations is still small and providing an administrative appeal procedure will not impose, at least at this time, a significant burden on the Commissioners and staff reviewing the appeals.

By a cross-reference, the new rule at § 2.220 carries over from the regulation at § 2.26, the deadlines for filing and deciding the appeal, the limit on exhibits that may be appended to the appeal, the grounds for appeal, and the voting requirements. The Commission is including in § 2.26 a new procedural requirement on the formatting of the appeal, and incorporates this requirement in § 2.220 by the cross-reference to § 2.26. The new procedural requirement is that the appellant briefly summarize at the beginning of his appeal all of the grounds for appeal, and then provide a concise statement of facts and reasons in support of each ground identified. The appellant may provide any additional information in an addendum to the appeal. Appeals that do not conform to this procedural requirement may be returned in the agency's discretion. The purpose of this requirement is to enhance the Commission's ability to readily identify meritorious claims, and focus its effort in the most productive manner, for the benefit of the agency and the appellant. The Commission is preparing a revised appeal form that incorporates the new format requirements and will distribute the revised form to federal correctional facilities and those organizations that have frequently filed administrative appeals with the Commission in the past.

The Commission would emphasize that the degree of review given to each appeal lies within the agency's discretion and depends on its evaluation of the strength of the appellant's claims as stated in the appeal. Because the purpose of the appeal is to correct error rather than decide each case *de novo,* some appeals will result in a summary denial, while others will deserve an in-depth review on the merits.

Because the Commission is providing this appeal procedure, the Commission is amending the voting requirements stated at § 2.218(g) for making the initial decisions on supervised release revocation. The amendment allows these decisions to be made on the vote of one Commissioner, except that two Commissioner votes are needed for any decision disagreeing with the panel

recommendation. Because appeals are almost always decided by a Commissioner other than the Commissioner who initially made the decision under review, if an offender chooses to exercise the option of filing an appeal, the appeal procedure will permit the offender to obtain review of the revocation decision by a second Commissioner. The opportunity for review of the case by a second Commissioner is an adequate substitute for the present voting requirement that two Commissioners concur for supervised release revocation decisions.

This appeal procedure for supervised release revocation decisions is in the nature of a pilot project, as when the Commission inaugurated its paroling policy guidelines for federal offenders. *See Battle* v. *Norton,* 365 F.Supp. 925 (D.Conn. 1973). In this era of budget constraints, the Commission will have to periodically reevaluate its ability to maintain this additional procedure, including the availability of sufficient staff and Commissioners to handle the appeals and the trends in federal and D.C. caseloads. If the balance of competing factors weighs against the continuation of the appeal procedure, the Commission will have to consider options that may range from enforcing explicit limitations on the grounds for appeals to termination of the appeal procedure.

Summary of Public Comment

In response to the Commission's November, 2000 publication of the interim rules for supervised release cases, the Commission received no public comment. Though the Commission could proceed to promulgate final rules on the exercise of its duties for D.C. supervised releasees, the Commission has decided to publish amended interim rules at this time and extend the opportunity for the submission of public comment. Now that more D.C. offenders are serving terms of supervised release and the Commission is taking an increasing number of actions regarding these offenders, there may be more interest in providing comment on the Commission's policies.

With regard to proposed rules published in April, 2003 on the consolidation and revision of release conditions, the Commission received one comment from a private company. This company, which specializes in the development and implementation of global positioning systems (GPS) for criminal justice applications, recommended that the Commission specify in its condition requiring home detention with electronic monitoring that the releasee be required to wear a GPS tracking or other electronic signaling device. The Commission has generally allowed the supervision agencies (the U.S. Probation Service and the D.C. Court Services and Offender Supervision Agency) to decide on the appropriate methods and technologies employed to monitor a releasee's compliance with release conditions, whether the monitoring is done through drug tests, mental health evaluations, or electronic tracking devices. The supervision agency, not the Commission, contracts for and pays for the use of the specific method or technology. Therefore, no change is made in the amended interim rule regarding the description of the special condition on home confinement/electronic monitoring.

The Commission is including the rules on the release conditions in the publication of amended interim rules because the agency wants to publish a comprehensive statement of the supervised release rules, of which the rule on conditions of supervised release is a significant part, and promulgating this discrete rule and the companion provisions for federal and D.C. parolees as final rules would be confusing to the public, in the Commission's judgment. Therefore, the Commission is extending the opportunity for public comment regarding the consolidation and revision of rules on release conditions.

Implementation

These interim rules will be applied to all cases as of the effective date of the rules. Appeals of supervised release revocation decisions will be permitted for any revocation decision made on or after the effective date of the rules. The procedural rules on the format of appeals are effective for any appeal dated on or after the effective date of the rules, but these rules will not be strictly enforced until a new appeal form is available to prisoners, releasees, and their representatives.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this interim rule does not constitute a significant rule within the meaning of Executive Order 12866. The interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Interim Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Amend § 2.26 by revising paragraph (a) to read as follows:

§ 2.26 Appeal to National Appeals Board.

(a)(1) A prisoner or parolee may submit to the National Appeals Board a written appeal of any decision to grant (other than a decision to grant parole on the date of parole eligibility), rescind, deny, or revoke parole, except that any appeal of a Commission decision pursuant to § 2.17 shall be submitted as a petition for reconsideration under § 2.27.

(2) The appeal must be filed on a form provided for that purpose within 30 days from the date of entry of the decision that is the subject of the appeal. The appeal must include an opening paragraph that briefly summarizes the grounds for the appeal. The appellant shall then list each ground separately and concisely explain the reasons supporting each ground. Appeals that do not conform to the above requirements may be returned at the Commission's discretion, in which case the appellant shall have 30 days from the date the appeal is returned to submit an appeal that complies with the above requirements. The appellant may provide any additional information for the Commission to consider in an addendum to the appeal. Exhibits may be attached to an appeal, but the appellant should not attach exhibits that are copies of documents already in the possession of the Commission. Any exhibits that are copies of documents already in the Commission's files will not be retained by the Commission.

* * * * *

■ 3. Revise § 2.40 to read as follows:

§ 2.40 Conditions of release.

(a) *General conditions of release.* (1) The conditions set forth in § 2.204(a)(3)–(6) apply for the reasons set forth in § 2.204(a)(1). These conditions are printed on the certificate of release issued to each releasee.

(2)(i) The refusal of a prisoner who has been granted a parole date to sign

the certificate of release (or any other document necessary to fulfill a condition of release) constitutes withdrawal of that prisoner's application for parole as of the date of refusal. To be considered for parole again, that prisoner must reapply for parole consideration.

(ii) A prisoner who is released to supervision through good-time deduction who refuses to sign the certificate of release is nevertheless bound by the conditions set forth in that certificate.

(b) *Special conditions of release.* (1) The Commission may impose a condition other than one of the general conditions of release if the Commission determines that such condition is necessary to protect the public from further crimes by the releasee and to provide adequate supervision of the releasee. Examples of special conditions of release that the Commission frequently imposes are found at § 2.204(b)(2).

(2) If the Commission requires the releasee's participation in a drug-treatment program, the releasee must submit to a drug test before release and to at least two other drug tests, as determined by the supervision officer. A decision not to impose this special condition, because available information indicates a low risk of future substance abuse by the releasee, shall constitute good cause for suspension of the drug testing requirements of 18 U.S.C. 4209(a). A grant of parole or reparole is contingent upon the prisoner passing all pre-release drug tests administered by the Bureau of Prisons.

(c) *Changing conditions of release.* The provisions of § 2.204(c) apply.

(d) *Appeal.* A releasee may appeal under § 2.26 an order to impose or modify a release condition not later than 30 days after the date the condition is imposed or modified.

(e) *Application of release conditions to absconder.* The provisions of § 2.204(d) apply.

(f) *Revocation for possession of a controlled substance.* If the Commission finds after a revocation hearing that a releasee, released after December 31, 1988, has possessed a controlled substance, the Commission shall revoke parole or mandatory release. If such a releasee fails a drug test, the Commission shall consider appropriate alternatives to revocation. The Commission shall not revoke parole on the basis of a single, unconfirmed positive drug test, if the releasee challenges the test result and there is no other violation found by the Commission to justify revocation.

(g) *Supervision officer guidance.* The provisions of § 2.204(f) apply.

(h) *Definitions.* For purposes of this section—

(1) The terms *supervision officer, domestic violence crime, approved offender-rehabilitation program* and *firearm,* as used in § 2.204, have the meanings given those terms by § 2.204(g);

(2) The term *releasee,* as used in this section and in § 2.204 means a person convicted of a federal offense who has been released on parole or released through good-time deduction; and

(3) The term *certificate of release,* as used in this section and § 2.204, means the certificate of parole or mandatory release delivered to the prisoner under § 2.29.

■ 4. Revise § 2.85 to read as follows:

§ 2.85 Conditions of release.

(a) *General conditions of release.* (1) The conditions set forth in § 2.204(a)(3)-(6) apply for the reasons set forth in § 2.204(a)(1). These conditions are printed on the certificate of release issued to each releasee.

(2)(i) The refusal of a prisoner who has been granted a parole date to sign the certificate of release (or any other document necessary to fulfill a condition of release) constitutes withdrawal of that prisoner's application for parole as of the date of refusal. To be considered for parole again, the prisoner must reapply for parole consideration.

(ii) A prisoner who is released to supervision through good-time deduction who refuses to sign the certificate of release is nevertheless bound by the conditions set forth in that certificate.

(b) *Special conditions of release.* The Commission may impose a condition other than one of the general conditions of release if the Commission determines that such condition is necessary to protect the public from further crimes by the releasee and provide adequate supervision of the releasee. Examples of special conditions of release that the Commission frequently imposes are found at § 2.204(b)(2).

(c) *Changing conditions of release.* The provisions of § 2.204(c) apply.

(d) *Application of release conditions to absconder.* The provisions of § 2.204(d) apply.

(e) *Supervision officer guidance.* The provisions of § 2.204(f) apply.

(f) *Definitions.* For purposes of this section—

(1) The terms *supervision officer, domestic violence crime, approved offender-rehabilitation program* and *firearm,* as used in § 2.204, have the meanings given those terms by § 2.204(g);

(2) The term *releasee,* as used in this section and in § 2.204, means a person convicted of an offense under the District of Columbia Code who has been released on parole or released through good-time deduction; and

(3) The term *certificate of release,* as used in this section and in § 2.204, means the certificate of parole or mandatory release delivered to the releasee under § 2.86.

■ 5. Revise Subpart D to read as follows:

Subpart D—District of Columbia Supervised Releasees

Sec.
2.200 Authority, jurisdiction, and functions of the U.S. Parole Commission with respect to offenders serving terms of supervised release imposed by the Superior Court of the District of Columbia.
2.201 Period of supervised release.
2.202 Prerelease procedures.
2.203 Certificate of supervised release.
2.204 Conditions of supervised release.
2.205 Confidentiality of supervised release records.
2.206 Travel approval and transfers of supervision.
2.207 Supervision reports to Commission.
2.208 Termination of a term of supervised release.
2.209 Order of termination.
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2.211 Summons to appear or warrant for retaking releasee.
2.212 Execution of warrant and service of summons.
2.213 Warrant placed as detainer and dispositional review.
2.214 Probable cause hearing and determination.
2.215 Place of revocation hearing.
2.216 Revocation hearing procedure.
2.217 Issuance of subpoena for appearance of witnesses or production of documents.
2.218 Revocation decisions.
2.219 Maximum terms of imprisonment and supervised release.
2.220 Appeal.

Subpart D—District of Columbia Supervised Releasees

§ 2.200 Authority, jurisdiction, and functions of the U.S. Parole Commission with respect to offenders serving terms of supervised release imposed by the Superior Court of the District of Columbia.

(a) The U.S. Parole Commission has jurisdiction, pursuant to D.C. Code 24–133(c)(2), over all offenders serving terms of supervised release imposed by the Superior Court of the District of Columbia under the Sentencing Reform Emergency Amendment Act of 2000.

(b) The U.S. Parole Commission shall have and exercise the same authority with respect to a term of supervised release as is vested in the United States

district courts by 18 U.S.C. 3583(d) through (i), except that:

(1) The procedures followed by the Commission in exercising that authority shall be those set forth with respect to offenders on federal parole at 18 U.S.C. 4209 through 4215 (Chapter 311 of 18 United States Code); and

(2) An extension of a term of supervised release under subsection (e)(2) of 18 U.S.C. 3583 may only be ordered by the Superior Court upon motion from the Commission.

(c) Within the District of Columbia, supervision of offenders on terms of supervised release under the Commission's jurisdiction is carried out by the Community Supervision Officers of the Court Services and Offender Supervision Agency (CSOSA), pursuant to D.C. Code 24–133(c)(2). Outside the District of Columbia, supervision is carried out by United States Probation Officers pursuant to 18 U.S.C. 3655. For the purpose of this subpart, any reference to a ''supervision officer'' shall include both a Community Supervision Officer of CSOSA and a United States Probation Officer in the case of a releasee who is under supervision outside the District of Columbia.

§ 2.201 Period of supervised release.

(a) A period of supervised release that is subject to the Commission's jurisdiction begins to run on the day the offender is released from prison and continues to the expiration of the full term imposed by the Superior Court, unless early termination is granted by the Commission.

(b) A term of supervised release shall run concurrently with any federal, state, or local term of probation, parole or supervised release for another offense, but does not run while the offender is imprisoned in connection with a conviction for a federal, state, or local crime (including a term of imprisonment resulting from a probation, parole, or supervised release revocation) unless the period of imprisonment is less than 30 days. Such interruption of the term of supervised release is required by D.C. Code 24–403.01(b)(5), and is not dependent upon the issuance of a warrant or an order of revocation by the Commission.

(c) (1) For an offender serving multiple terms of supervised release imposed by the Superior Court, the duration of the Commission's jurisdiction over the offender shall be governed by the longest term imposed.

(2) If the Commission terminates such an offender from supervision on the longest term imposed, this order shall have the effect of terminating the offender from all terms of supervised release that the offender is serving at the time of the order.

(3) If the Commission issues a warrant or summons for such an offender, or revokes supervised release for such an offender, the Commission's action shall have the effect of commencing revocation proceedings on, or revoking, all terms that the offender is serving at the time of the action. In revoking supervised release the Commission shall impose a term of imprisonment and a further term of supervised release as if the Commission were revoking a single term of supervised release. For the purpose of calculating the maximum authorized term of imprisonment at first revocation and the original maximum authorized term of supervised release, the Commission shall use the unexpired supervised release term imposed for the offense punishable by the longest maximum term of imprisonment.

(4) If such an offender is released to a further term of supervised release after serving a prison term resulting from a supervised release revocation, the Commission shall consider the offender to be serving only the single term of supervised release ordered after revocation.

§ 2.202 Prerelease procedures.

(a) At least three months, but not more than six months, prior to the release of a prisoner who has been sentenced to a term or terms of supervised release by the Superior Court, the responsible prison officials shall have the prisoner's release plan forwarded to CSOSA (or to the appropriate U.S. Probation Office) for investigation. If the supervision officer believes that any special condition of supervised release should be imposed prior to the release of the prisoner, the officer shall forward a request for such condition to the Commission. The Commission may, upon such request or of its own accord, impose any special condition in addition to the standard conditions specified in § 2.204, which shall take effect on the day the prisoner is released.

(b) Upon the release of the prisoner, the responsible prison officials shall instruct the prisoner, in writing, to report to the assigned supervision office within 72 hours, and shall inform the prisoner that failure to report on time shall constitute a violation of supervised release. If the prisoner is released to the custody of other authorities, the prisoner shall be instructed to report to the supervision office within 72 hours after his release from the physical custody of such authorities. If the prisoner is unable to report to the supervision office within 72 hours of release because of an emergency, the prisoner shall be instructed to report to the nearest U.S. Probation Office and obey the instructions given by the duty officer.

§ 2.203 Certificate of supervised release.

When an offender who has been released from prison to serve a term of supervised release reports to the supervision officer for the first time, the supervision officer shall deliver to the releasee a certificate listing the conditions of supervised release imposed by the Commission and shall explain the conditions to the releasee.

§ 2.204 Conditions of supervised release.

(a)(1) *General conditions of release and notice by certificate of release.* The conditions set forth in paragraphs (a)(3)-(6) of this section apply to every releasee and are necessary to protect the public from further crimes by the releasee and to provide adequate supervision of the releasee. The certificate of release issued to each releasee by the Commission notifies the releasee of these conditions.

(2) *Effect of refusal to sign certificate of release.* A releasee who refuses to sign the certificate of release is nonetheless bound by the conditions set forth in that certificate.

(3) *Reporting arrival.* The releasee shall go directly to the district named in the certificate, appear in person at the supervision office, and report the releasee's residence address to the supervision officer. If the releasee is unable to appear in person at that office within 72 hours of release because of an emergency, the releasee shall report to the nearest U.S. Probation Office and obey the instructions given by the duty officer. A releasee who is initially released to the physical custody of another authority shall follow the procedures described in this paragraph upon release from the custody of the other authority.

(4) *Providing information to and cooperating with the supervision officer.*

(i) The releasee shall, between the first and third day of each month, make a written report to the supervision officer on a form provided for that purpose. The releasee shall also report to the supervision officer at such times and in such a manner as that officer directs and shall provide such information as the supervision officer requests. All information that a releasee provides to the supervision officer shall be complete and truthful.

(ii) The releasee shall notify the supervision officer within two days of an arrest or questioning by a law-

enforcement officer, a change in place of residence, or a change in employment.

(iii) The releasee shall permit the supervision officer to visit the releasee's residence and workplace.

(iv) The releasee shall permit the supervision officer to confiscate any material that the supervision officer believes may constitute contraband and that is in plain view in the releasee's possession, including in the releasee's residence, workplace, or vehicle.

(v) The releasee shall submit to a drug or alcohol test whenever ordered to do so by the supervision officer.

(5) *Prohibited conduct.* (i) The releasee shall not violate any law and shall not associate with a person who is violating any law.

(ii) The releasee shall not possess a firearm, other dangerous weapon, or ammunition.

(iii) The releasee shall not drink alcoholic beverages to excess and shall not illegally buy, possess, use, or administer a controlled substance. The releasee shall not frequent a place where a controlled substance is illegally sold, dispensed, used, or given away.

(iv) The releasee shall not leave the geographic limits set by the certificate of release without written permission from the supervision officer.

(v) The releasee shall not associate with a person who has a criminal record without permission from the supervision officer.

(vi) The releasee shall not enter into an agreement to act as an informer or special agent for a law-enforcement agency without the prior approval of the Commission.

(6) *Additional conditions.* (i) The releasee shall make a diligent effort to work regularly, unless excused by the supervision officer, and to support any legal dependent. The releasee shall participate in an employment readiness program if so directed by the supervision officer.

(ii) The releasee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, or court-ordered child support or alimony payment to which the releasee is subject. The releasee shall provide financial information relevant to the payment of such a financial obligation that is requested by the supervision officer. If unable to pay such a financial obligation in one sum, the releasee shall cooperate with the supervision officer to establish an installment-payment schedule.

(iii) If the term of supervision results from a conviction for a domestic violence crime, and such conviction is the releasee's first conviction for such a crime, the releasee shall, as directed by the supervision officer, attend an approved offender-rehabilitation program if such a program is readily available within a 50-mile radius of the releasee's residence.

(iv) The releasee shall comply with any applicable sex-offender reporting and registration law.

(v) The releasee shall provide a DNA sample, as directed by the supervision officer, if collection of such sample is authorized by the DNA Analysis Backlog Elimination Act of 2000.

(vi) If the releasee is supervised by the District of Columbia Court Services and Offender Supervision Agency, the releasee shall submit to the sanctions imposed by the supervision officer within the limits established by an approved schedule of graduated sanctions if the supervision officer finds that the releasee has tested positive for illegal drugs or has committed a noncriminal violation of the conditions of release. Notwithstanding the imposition of a graduated sanction, if the Commission believes the releasee is a risk to the public safety, or is not complying in good faith with the sanction imposed, the Commission may commence revocation proceedings on the alleged violation(s) upon which the graduated sanction was based.

(vii) As directed by the supervision officer, the releasee shall notify a person of a risk of harm that may be determined from a review of the releasee's criminal record or personal history and characteristics. In addition, the supervision officer is authorized to make such notifications as are permitted by the Commission's rules, and to confirm the releasee's compliance with any notification directive. (b)(1) *Special conditions of release.* The Commission may impose a condition other than a condition set forth in paragraphs (a)(3)–(6) of this section if the Commission determines that such condition is necessary to protect the public from further crimes by the releasee and provide adequate supervision of the releasee.

(2) The following are examples of special conditions frequently imposed by the Commission—

(i) That the releasee reside in or participate in the program of a community corrections center, or both, for all or part of the period of supervision;

(ii) That the releasee participate in a drug-or alcohol-treatment program, and abstain from all use of alcohol and other intoxicants;

(iii) That, as an alternative to incarceration, the releasee remain at home during nonworking hours and have compliance with this condition monitored by telephone or electronic signaling devices; and

(iv) That the releasee permit a supervision officer to conduct a search of the releasee's person, or of any building, vehicle, or other area under the control of the releasee, at such time as that supervision officer shall decide, and to seize contraband found thereon or therein.

(3) If the Commission requires the releasee's participation in a drug-treatment program, the releasee must submit to a drug test within 15 days of release and to at least two other drug tests, as determined by the supervision officer. A decision not to impose this special condition, because available information indicates a low risk of future substance abuse by the releasee, shall constitute good cause for suspension of the drug testing requirements of 18 U.S.C. 3583(d).

(c) *Changing conditions of release.* (1) The Commission may at any time modify or add to the conditions of release if the Commission determines that such modification or addition is necessary to protect the public from further crimes by the releasee and provide adequate supervision of the releasee.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, before the Commission orders a change of condition, the releasee shall be notified of the proposed modification or addition and, unless waived, shall have 10 days from receipt of such notification to comment on the proposed modification or addition. Following that 10-day period, the Commission shall have 21 days, exclusive of holidays, to determine whether to order such modification or addition to the conditions of release.

(ii) The 10-day notice requirement of paragraph (c)(2)(i) of this section does not apply to a change of condition that results from a revocation hearing for the releasee, a determination that the modification or addition must be ordered immediately to prevent harm to the releasee or to the public, or a request from the releasee.

(d) *Application of release conditions to absconder.* A releasee who absconds from supervision prevents the term of supervision from expiring and the running of the term is tolled during the time that the releasee is an absconder. A releasee who absconds from supervision remains bound by the conditions of release, even after the date that the term of supervision originally was scheduled to expire. The Commission may revoke the term of supervision based on a violation of a release condition committed by such a

releasee before the expiration of the term of supervision, as extended by the period of absconding.

(e) *Revocation for certain violations of release conditions.* If the Commission finds after a revocation hearing that a releasee has possessed a controlled substance, refused to comply with drug testing, possessed a firearm, or tested positive for illegal controlled substances more than three times over the course of one year, the Commission shall revoke the term of supervision and impose a term of imprisonment as provided at § 2.218. If the releasee fails a drug test, the Commission shall consider appropriate alternatives to revocation.

(f) *Supervision officer guidance.* The Commission expects a releasee to understand the conditions of release according to the plain meaning of those conditions and to seek the guidance of the supervision officer before engaging in conduct that may violate a condition of release. The supervision officer may instruct a releasee to refrain from particular conduct, or take specific steps to avoid violating a condition of release, or to correct an existing violation of a condition of release. The releasee's failure to obey a directive from the supervision officer to report on compliance with such instructions may be considered as a violation of the condition described at paragraph (a)(4)(i) of this section.

(g) *Definitions.* As used in this section, the term—

(1) *Releasee* means a person who has been sentenced to a term of supervised release by the Superior Court of the District of Columbia;

(2) *Supervision officer* means a Community Supervision Officer of the District of Columbia Court Services and Offender Supervision Agency or United States Probation Officer;

(3) *Domestic violence crime* has the meaning given that term by 18 U.S.C. 3561, except that the term ''court of the United States'' as used in that definition shall be deemed to include the District of Columbia Superior Court;

(4) *Approved offender-rehabilitation program* means a program that has been approved by the District of Columbia Court Services and Offender Supervision Agency (or the United States Probation Office) in consultation with a State Coalition Against Domestic Violence or other appropriate experts;

(5) *Certificate of release* means the certificate of supervised release delivered to the releasee under § 2.203; and

(6) *Firearm* has the meaning given by 18 U.S.C. 921.

§ 2.205 Confidentiality of supervised release records.

(a) Consistent with the Privacy Act of 1974 (5 U.S.C 552a(b)), the contents of supervised release records shall be confidential and shall not be disclosed outside the Commission and CSOSA (or the U.S. Probation Office) except as provided in paragraphs (b) and (c) of this section.

(b) Information pertaining to a releasee may be disclosed to the general public, without the consent of the releasee, as authorized by § 2.37.

(c) Information other than as described in § 2.37 may be disclosed without the consent of the releasee only pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a(b)) and the implementing rules of the Commission or CSOSA, as applicable.

§ 2.206 Travel approval and transfers of supervision.

(a) A releasee's supervision officer may approve travel outside the district of supervision without approval of the Commission in the following situations:

(1) Trips not to exceed thirty days for family emergencies, vacations, and similar personal reasons;

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities; and

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Commission is required for all foreign travel, employment requiring recurring travel more than fifty miles outside the district, and vacation travel outside the district of supervision exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

(c) A special condition imposed by the Commission prohibiting certain travel shall apply instead of any general rules relating to travel as set forth in paragraph (a) of this section.

(d) The district of supervision for a releasee under the supervision of CSOSA shall be the District of Columbia, except that for the purpose of travel permission under this section, the district of supervision shall include the D.C. metropolitan area as defined in the certificate of supervised release.

(e) A supervised releasee who is under the jurisdiction of the Commission, and who is released or transferred to a district outside the District of Columbia, shall be supervised by a U.S. Probation Officer pursuant to 18 U.S.C. 3655.

(f) A supervised releasee may be transferred to a new district of supervision with the permission of the supervision offices of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

§ 2.207 Supervision reports to Commission.

A regular supervision report shall be submitted to the Commission by the supervision officer after the completion of 12 months of continuous community supervision and annually thereafter. The supervision officer shall submit such additional reports and information concerning both the releasee, and the enforcement of the conditions of supervised release, as the Commission may direct. All reports shall be submitted according to the format established by the Commission.

§ 2.208 Termination of a term of supervised release.

(a) The Commission, in its discretion, may terminate a term of supervised release and discharge the releasee from further supervision at any time after the expiration of one year of supervised release, if the Commission is satisfied that such action is warranted by the conduct of the releasee and the interest of justice.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each releasee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release prior to the most recent release, nor any period served in confinement on any other sentence. A review shall also be conducted whenever termination of supervision is specially recommended by the releasee's supervision officer. If the term of supervised release imposed by the court is two years or less, termination of supervision shall be considered only if specially recommended by the releasee's supervision officer.

(c) In determining whether to grant early termination of supervision, the Commission shall calculate for the releasee a Salient Factor Score under § 2.20, and shall apply the following early termination guidelines, provided that case-specific factors do not indicate a need for continued supervision:

(1) For a releasee classified in the very good risk category and whose current offense did not involve violence, termination of supervision may be ordered after two continuous years of incident-free supervision in the community.

(2) For a releasee classified in the very good risk category and whose current

offense involved violence other than high level violence, termination of supervision may be ordered after three continuous years of incident-free supervision in the community.

(3) For a releasee classified in the very good risk category and whose current offense involved high level violence (without death of victim resulting), termination of supervision may be ordered after four continuous years of incident-free supervision in the community.

(4) For a releasee classified in other than the very good risk category, whose current offense did not involve violence, and whose prior record includes not more than one episode of felony violence, termination of supervision may be ordered after three continuous years of incident-free supervision in the community.

(5) For a releasee classified in other than the very good risk category whose current offense involved violence other than high level violence, or whose current offense did not involve violence but the releasee's prior record includes two or more episodes of felony violence, termination of supervision may be ordered after four continuous years of incident-free supervision in the community.

(6) For releasees in the following categories, release from supervision prior to five years may be ordered only upon a case-specific finding that, by reason of age, infirmity, or other compelling factors, the releasee is unlikely to be a threat to the public safety:

(i) A releasee in other than the very good risk category whose current offense involved high level violence;

(ii) A releasee whose current offense involved high level violence with death of victim resulting; and

(iii) A releasee who is a sex offender serving a term of supervised release that exceeds five years.

(7) The terms *violence* and *high level violence* are defined in § 2.80. The term incident-free supervision means that the releasee has had no reported violations, and has not been the subject of any arrest or law enforcement investigation that raises a reasonable doubt as to whether the releasee has been able to refrain from law violations while under supervision.

(d) Except in the case of a releasee covered by paragraph (c)(6) of this section, a decision to terminate supervision below the guidelines may be made if it appears that the releasee is a better risk than indicated by the salient factor score (if classified in other than the very good risk category), or is a less serious risk to the public safety than indicated by a violent current offense or prior record. However, termination of supervision prior to the completion of two years of incident-free supervision will not be granted in any case unless case-specific factors clearly indicate that continued supervision would be counterproductive to the releasee's rehabilitation.

(e) A releasee with a pending criminal charge who is otherwise eligible for an early termination from supervision shall not be discharged from supervision until the disposition of such charge is known.

(f) Decisions on the early termination of a term of supervised release for an offender sentenced under the YRA shall be made under the provisions of this section. If the Commission terminates the term of supervised release before the expiration of the term, the youth offender's conviction is automatically set aside and the Commission shall issue a certificate setting aside the conviction. *See* D.C. Code 24–906(c), (d). The set-aside certificate shall be issued in lieu of the certificate of discharge described in § 2.209.

§ 2.209 Order of termination.

When the Commission orders the termination of a term of supervised release, it shall issue a certificate to the releasee granting the releasee a full discharge from his term of supervised release. The termination and discharge shall take effect only upon the actual delivery of the certificate of discharge to the releasee by the supervision officer, and may be rescinded for good cause at any time prior to such delivery.

§ 2.210 Extension of term.

(a) At any time during service of a term of supervised release, the Commission may submit to the Superior Court a motion to extend the term of supervised release to the maximum term authorized by law, if less than the maximum authorized term was originally imposed. If the Superior Court grants the Commission's motion prior to the expiration of the term originally imposed, the extension ordered by the court shall take effect upon issuance of the order.

(b) The Commission may submit the motion for an extension of a term of supervised release if the Commission finds that the rehabilitation of the releasee or the protection of the public from further crimes by the releasee is likely to require a longer period of supervision than the court originally contemplated. The Commission's grounds for making such a finding shall be stated in the motion filed with the court.

(c) The provisions of this section shall not apply to the Commission's determination of an appropriate period of further supervised release following revocation of a term of supervised release.

§ 2.211 Summons to appear or warrant for retaking releasee.

(a) If a releasee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, a Commissioner may:

(1) Issue a summons requiring the releasee to appear for a probable cause hearing or local revocation hearing; or

(2) Issue a warrant for the apprehension and return of the releasee to custody.

(b) A summons or warrant under paragraph (a) of this section may be issued or withdrawn only by a Commissioner.

(c) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of the violations, in the opinion of a Commissioner, requires such issuance. In the case of any releasee who is charged with a criminal offense and who is awaiting disposition of such charge, issuance of a summons or warrant may be:

(1) Temporarily withheld;

(2) Issued by the Commission and held in abeyance;

(3) Issued by the Commission and a detainer lodged with the custodial authority; or

(4) Issued for the retaking of the releasee.

(d) A summons or warrant may be issued only within the maximum term or terms of the period of supervised release being served by the releasee, except as provided for an absconder from supervision in § 2.204(i). A summons or warrant shall be considered issued when signed and either:

(1) Placed in the mail; or

(2) Sent by electronic transmission to the appropriate law enforcement authority.

(e) The issuance of a warrant under this section operates to bar the expiration of the term of supervised release. Such warrant maintains the Commission's jurisdiction to retake the releasee either before or after the normal expiration date of the term, and for such time as may be reasonably necessary for the Commission to reach a final decision as to revocation of the term of supervised release.

(f) A summons or warrant issued pursuant to this section shall be

accompanied by a warrant application (or other notice) stating:

(1) The charges against the releasee;

(2) The specific reports and other documents upon which the Commission intends to rely in determining whether a violation of supervised release has occurred and whether to revoke supervised release;

(3) Notice of the Commission's intent, if the releasee is arrested within the District of Columbia, to hold a probable cause hearing within five days of the releasee's arrest;

(4) A statement of the purpose of the probable cause hearing;

(5) The days of the week on which the Commission regularly holds its dockets of probable cause hearings at the Central Detention Facility;

(6) The releasee's procedural rights in the revocation process; and

(7) The possible actions that the Commission may take.

(g) In the case of an offender who is serving concurrent terms of parole and supervised release under the Commission's jurisdiction, the Commission may take any action permitted by this section on the basis of one or more of the terms (*e.g.,* the Commission may issue warrants on both terms, and order that the first warrant should be executed, and that the second warrant should be placed as a detainer and executed only when the offender is released from the prison term that begins with the execution of the first warrant). The Commission may conduct separate revocation hearings, or consider all parole and supervised release violation charges in one combined hearing and make dispositions on the parole and supervised release terms. If the Commission conducts separate revocation hearings and revokes parole or supervised release at the first hearing, the Commission may conduct the subsequent hearing on the same violation behavior as an institutional hearing.

§ 2.212 Execution of warrant and service of summons.

(a) Any officer of any Federal or District of Columbia correctional institution, any Federal Officer authorized to serve criminal process, or any officer or designated civilian employee of the Metropolitan Police Department of the District of Columbia, to whom a warrant is delivered, shall execute such warrant by taking the releasee and returning him to the custody of the Attorney General.

(b) Upon the arrest of the releasee, the officer executing the warrant shall deliver to the releasee a copy of the warrant application (or other notice provided by the Commission) containing the information described in § 2.211(f).

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the releasee is to be continued under supervision by the supervision officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the releasee must continue to abide by all the conditions of release.

(d) If any other warrant for the arrest of the releasee has been executed or is outstanding at the time the Commission's warrant is executed, the arresting officer may, within 72 hours of executing the Commission's warrant, release the arrestee to such other warrant and lodge the Commission's warrant as a detainer, voiding the execution thereof, provided such action is consistent with the instructions of the Commission. In other cases, the arrestee may be released from an executed warrant whenever the Commission finds such action necessary to serve the ends of justice.

(e) A summons to appear at a probable cause hearing or revocation hearing shall be served upon the releasee in person by delivering to the releasee a copy of the summons and the application therefor. Service shall be made by any Federal or District of Columbia officer authorized to serve criminal process and certification of such service shall be returned to the Commission.

(f) Official notification of the issuance of a Commission warrant shall authorize any law enforcement officer within the United States to hold the releasee in custody until the warrant can be executed in accordance with paragraph (a) of this section.

§ 2.213 Warrant placed as detainer and dispositional review.

(a) When a releasee is a prisoner in the custody of other law enforcement authorities, or is serving a new sentence of imprisonment imposed for a crime (or for a violation of some other form of community supervision) committed while on supervised release, a violation warrant may be lodged against him as a detainer.

(b) The Commission shall review the detainer upon the request of the prisoner pursuant to the procedure set forth in § 2.47(a)(2). Following such review, the Commission may:

(1) Withdraw the detainer and order reinstatement of the prisoner to supervision upon release from custody;

(2) Order a dispositional revocation hearing to be conducted at the institution in which the prisoner is confined; or

(3) Let the detainer stand until the new sentence is completed. Following the execution of the Commission's warrant, and the transfer of the prisoner to an appropriate federal facility, an institutional revocation hearing shall be conducted.

(c) Dispositional revocation hearings pursuant to this section shall be conducted in accordance with the provisions at § 2.216 governing institutional revocation hearings. A hearing conducted at a state or local facility may be conducted either by a hearing examiner or by any federal, state, or local official designated by a Commissioner. Following a revocation hearing conducted pursuant to this section, the Commission may take any action authorized by §§ 2.218 and 2.219.

(d) The date the violation term commences is the date the Commission's warrant is executed. A releasee's violation term (*i.e.,* the term of imprisonment and/or further term of supervised release that the Commission may require the releasee to serve after revocation) shall start to run only upon the offender's release from the confinement portion of the intervening sentence.

(e) An offender whose supervised release is revoked shall be given credit for all time in confinement resulting from any new offense or violation that is considered by the Commission as a basis for revocation, but solely for the purpose of satisfying the time ranges in the reparole guidelines at § 2.21. The computation of the offender's sentence, and the forfeiture of time on supervised release, are not affected by such guideline credit.

§ 2.214 Probable cause hearing and determination.

(a) *Hearing.* A supervised releasee who is retaken and held in custody in the District of Columbia on a warrant issued by the Commission, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission no later than five days from the date of such retaking. A releasee who is retaken and held in custody outside the District of Columbia, but within the Washington D.C. metropolitan area, and who has not been convicted of a new crime, shall be given a probable cause hearing by an examiner of the Commission within five days of the releasee's arrival at a facility

where probable cause hearings are conducted. The purpose of a probable cause hearing is to determine whether there is probable cause to believe that the releasee has violated the conditions of supervised release as charged, and if so, whether a local or institutional revocation hearing should be conducted. If the examiner finds probable cause, the examiner shall schedule a final revocation hearing to be held within 65 days of the releasee's arrest.

(b) *Notice and opportunity to postpone hearing.* Prior to the commencement of each docket of probable cause hearings in the District of Columbia, a list of the releasees who are scheduled for probable cause hearings, together with a copy of the warrant application for each releasee, shall be sent to the D.C. Public Defender Service. At or before the probable cause hearing, the releasee (or the releasee's attorney) may submit a written request that the hearing be postponed for any period up to thirty days, and the Commission shall ordinarily grant such requests. Prior to the commencement of the probable cause hearing, the examiner shall advise the releasee that the releasee may accept representation by the attorney from the D.C. Public Defender Service who is assigned to that docket, waive the assistance of an attorney at the probable cause hearing, or have the probable cause hearing postponed in order to obtain another attorney and/or witnesses on his behalf. In addition, the releasee may request the Commission to require the attendance of adverse witnesses (*i.e.,* witnesses who have given information upon which revocation may be based) at a postponed probable cause hearing. Such adverse witnesses may be required to attend either a postponed probable cause hearing, or a combined postponed probable cause and local revocation hearing, provided the releasee meets the requirements of § 2.215(a) for a local revocation hearing. The releasee shall also be given notice of the time and place of any postponed probable cause hearing.

(c) *Review of the charges.* At the beginning of the probable cause hearing, the examiner shall ascertain that the notice required by § 2.212(b) has been given to the releasee. The examiner shall then review the violation charges with the releasee and shall apprise the releasee of the evidence that has been submitted in support of the charges. The examiner shall ascertain whether the releasee admits or denies each charge listed on the warrant application (or other notice of charges), and shall offer the releasee an opportunity to rebut or explain the allegations contained in the evidence giving rise to each charge. The examiner shall also receive the statements of any witnesses and documentary evidence that may be presented by the releasee. At a postponed probable cause hearing, the examiner shall also permit the releasee to confront and cross-examine any adverse witnesses in attendance, unless good cause is found for not allowing confrontation. Whenever a probable cause hearing is postponed to secure the appearance of adverse witnesses (or counsel in the case of a probable cause hearing conducted outside the District of Columbia), the Commission will ordinarily order a combined probable cause and local revocation hearing as provided in paragraph (i) of this section.

(d) *Probable cause determination.* At the conclusion of the probable cause hearing, the examiner shall determine whether probable cause exists to believe that the releasee has violated the conditions of release as charged, and shall so inform the releasee. The examiner shall then take either of the following actions:

(1) If the examiner determines that no probable cause exists for any violation charge, the examiner shall order that the releasee be released from the custody of the warrant and either reinstated to supervision, or discharged from supervision if the term of supervised release has expired.

(2) If the hearing examiner determines that probable cause exists on any violation charge, and the releasee has requested (and is eligible for) a local revocation hearing in the District of Columbia as provided by § 2.215(a), the examiner shall schedule a local revocation hearing for a date that is within 65 days of the releasee's arrest. After the probable cause hearing, the releasee (or the releasee's attorney) may submit a written request for a postponement. Such postponements will normally be granted if the request is received no later than fifteen days before the date of the revocation hearing. A request for a postponement that is received by the Commission less than fifteen days before the scheduled date of the revocation hearing will be granted only for a compelling reason. The releasee (or the releasee's attorney) may also request, in writing, a hearing date that is earlier than the date scheduled by the examiner, and the Commission will accommodate such request if practicable.

(e) *Institutional revocation hearing.* If the releasee is not eligible for a local revocation hearing as provided by § 2.215(a), or has requested to be transferred to an institution for his revocation hearing, the Commission will request the Bureau of Prisons to designate the releasee to an appropriate institution, and an institutional revocation hearing shall be scheduled for a date that is within 90 days of the releasee's retaking.

(f) *Digest of the probable cause hearing.* At the conclusion of the probable cause hearing, the examiner shall prepare a digest summarizing the evidence presented at the hearing, the responses of the releasee, and the examiner's findings as to probable cause.

(g) *Release notwithstanding probable cause.* Notwithstanding a finding of probable cause, the Commission may order the releasee's reinstatement to supervision or release pending further proceedings, if it determines that:

(1) Continuation of revocation proceedings is not warranted despite the finding of probable cause; or

(2) Incarceration pending further revocation proceedings is not warranted by the frequency or seriousness of the alleged violation(s), and the releasee is neither likely to fail to appear for further proceedings, nor is a danger to himself or others.

(h) *Conviction as probable cause.* Conviction of any crime committed subsequent to the commencement of a term of supervised release shall constitute probable cause for the purposes of this section, and no probable cause hearing shall be conducted unless a hearing is needed to consider additional violation charges that may be determinative of the Commission's decision whether to revoke supervised release.

(i) *Combined probable cause and local revocation hearing.* A postponed probable cause hearing may be conducted as a combined probable cause and local revocation hearing, provided such hearing is conducted within 65 days of the releasee's arrest and the releasee has been notified that the postponed probable cause hearing will constitute the final revocation hearing. The Commission's policy is to conduct a combined probable cause and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

(j) *Late received charges.* If the Commission is notified of an additional charge after probable cause has been found to proceed with a revocation hearing, the Commission may:

(1) Remand the case for a supplemental probable cause hearing to determine if the new charge is contested by the releasee and if witnesses must be presented at the revocation hearing;

(2) Notify the releasee that the additional charge will be considered at the revocation hearing without conducting a supplemental probable cause hearing; or

(3) Determine that the new charge shall not be considered at the revocation hearing.

§ 2.215 Place of revocation hearing.

(a) If the releasee requests a local revocation hearing, the releasee shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, with the opportunity to contest the violation charges, if the following conditions are met:

(1) The releasee has not been convicted of a crime committed while under supervision; and

(2) The releasee denies all violation charges.

(b) The releasee shall also be given a local revocation hearing if the releasee admits (or has been convicted of) one or more charged violations, but denies at least one unadjudicated charge that may be determinative of the Commission's decision regarding revocation or the length of any new term of imprisonment, and the releasee requests the presence of one or more adverse witnesses regarding that contested charge. If the appearance of such witnesses at the hearing is precluded by the Commission for good cause, a local revocation hearing shall not be ordered.

(c) If there are two or more contested charges, a local revocation hearing may be conducted near the place of the violation chiefly relied upon by the Commission as a basis for the issuance of the warrant or summons.

(d)(1) A releasee shall be given an institutional revocation hearing upon the releasee's return or recommitment to an institution if the releasee:

(i) Voluntarily waives the right to a local revocation hearing; or

(ii) Admits (or has been convicted of) one or more charged violations without contesting any unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or imposition of a new term of imprisonment.

(2) An institutional revocation hearing may also be conducted in the District of Columbia jail or prison facility in which the releasee is being held. On his own motion, a Commissioner may designate any case described in paragraph (d)(1) of this section for a local revocation hearing. The difference in procedures between a ''local revocation hearing'' and an ''institutional revocation hearing'' is set forth in § 2.216(b).

(e) Unless the Commission orders release notwithstanding a probable cause finding under § 2.214(g), a releasee who is retaken on a warrant issued by the Commission shall remain in custody until a decision is made on the revocation of the term of supervised release. A releasee who has been given a revocation hearing pursuant to the issuance of a summons shall remain on supervision pending the decision of the Commission, unless the Commission has ordered otherwise.

(f) A local revocation hearing shall be held not later than 65 days from the retaking of the releasee on a supervised release violation warrant. An institutional revocation hearing shall be held within 90 days of the retaking of the releasee on a supervised release violation warrant. If the releasee requests and receives any postponement, or consents to any postponement, or by his actions otherwise precludes the prompt completion of revocation proceedings in his case, the above-stated time limits shall be correspondingly extended.

(g) A local revocation hearing may be conducted by a hearing examiner or by any federal, state, or local official who is designated by a Commissioner to be the presiding hearing officer. An institutional revocation hearing may be conducted by a hearing examiner.

§ 2.216 Revocation hearing procedure.

(a) The purpose of the revocation hearing shall be to determine whether the releasee has violated the conditions of the term of supervised release, and, if so, whether the term should be revoked or the releasee restored to supervised release.

(b) At a local revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence. The alleged violator may also request the Commission to compel the attendance of any adverse witnesses for cross-examination, and any other relevant witnesses who have not volunteered to attend. At an institutional revocation hearing, the alleged violator may present voluntary witnesses and documentary evidence, but may not request the Commission to secure the attendance of any adverse or favorable witness. At any hearing, the presiding hearing officer may limit or exclude any irrelevant or repetitious statement or documentary evidence, and may prohibit the releasee from contesting matters already adjudicated against him in other forums.

(c) At a local revocation hearing, the Commission shall, on the request of the alleged violator, require the attendance of any adverse witnesses who have given statements upon which revocation may be based, subject to a finding of good cause as described in paragraph (d) of this section. The adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator. The Commission may also require the attendance of adverse witnesses on its own motion.

(d) The Commission may excuse any requested adverse witness from appearing at the hearing (or from appearing in the presence of the alleged violator) if the Commission finds good cause for so doing. A finding of good cause for the non-appearance of a requested adverse witness may be based, for example, on a significant possibility of harm to the witness, or the witness not being reasonably available when the Commission has documentary evidence that is an adequate substitute for live testimony.

(e) All evidence upon which a finding of violation may be based shall be disclosed to the alleged violator before the revocation hearing. Such evidence shall include the community supervision officer's letter summarizing the releasee's adjustment to supervision and requesting the warrant, all other documents describing the charged violation or violations, and any additional evidence upon which the Commission intends to rely in determining whether the charged violation or violations, if sustained, would warrant revocation of supervised release. If the releasee is represented by an attorney, the attorney shall be provided, prior to the revocation hearing, with a copy of the releasee's presentence investigation report, if such report is available to the Commission. If disclosure of any information would reveal the identity of a confidential informant or result in harm to any person, that information may be withheld from disclosure, in which case a summary of the withheld information shall be disclosed to the releasee prior to the revocation hearing.

(f) An alleged violator may be represented by an attorney at either a local or an institutional revocation hearing. In lieu of an attorney, an alleged violator may be represented at any revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf. Only licensed attorneys shall be permitted to question witnesses, make objections, and otherwise provide legal representation for supervised releasees, except in the case of law students appearing before the Commission as part of a court-approved clinical practice program. Such law students must be under the

personal direction of a lawyer or law professor who is physically present at the hearing, and the examiner shall ascertain that the releasee consents to the procedure.

(g) At a local revocation hearing, the Commission shall secure the presence of the releasee's community supervision officer, or a substitute community supervision officer who shall bring the releasee's supervision file if the releasee's community supervision officer is not available. At the request of the hearing examiner, such officer shall provide testimony at the hearing concerning the releasee's adjustment to supervision.

(h) After the revocation hearing, the hearing examiner shall prepare a summary of the hearing that includes a description of the evidence against the releasee and the evidence submitted by the releasee in defense or mitigation of the charges, a summary of the arguments against revocation presented by the releasee, and the examiner's recommended decision. The hearing examiner's summary, together with the releasee's file (including any documentary evidence and letters submitted on behalf of the releasee), shall be given to another examiner for review. When two hearing examiners concur in a recommended disposition, that recommendation, together with the releasee's file and the hearing examiner's summary of the hearing, shall be submitted to the Commission for decision.

§ 2.217 Issuance of subpoena for appearance of witnesses or production of documents.

(a)(1) If any adverse witness (*i.e.,* a person who has given information upon which revocation may be based) refuses, upon request by the Commission, to appear at a probable cause hearing or local revocation hearing, a Commissioner may issue a subpoena for the appearance of such witness.

(2) In addition, a Commissioner may, upon a showing by the releasee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) A subpoena may also be issued at the discretion of a Commissioner if an adverse witness is judged unlikely to appear as requested, or if the subpoena is deemed necessary for the orderly processing of the case.

(b) A subpoena may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal or District of Columbia officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to such a person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district in which the revocation proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. If the court issues an order requiring such person to appear before the Commission, failure to obey such an order is punishable as contempt, as provided in 18 U.S.C. 4214(a)(2).

§ 2.218 Revocation decisions.

(a) Whenever a releasee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence that the releasee has violated one or more conditions of supervised release, the Commission may take any of the following actions:

(1) Restore the releasee to supervision, and where appropriate:

(i) Reprimand the releasee;

(ii) Modify the releasee's conditions of release;

(iii) Refer the releasee to a residential community corrections center for all or part of the remainder of the term of supervised release; or

(2) Revoke the term of supervised release.

(b) If supervised release is revoked, the Commission shall determine whether the releasee shall be returned to prison to serve a new term of imprisonment, and the length of that term, or whether a new term of imprisonment shall be imposed but limited to time served. If the Commission imposes a new term of imprisonment that is less than the applicable maximum term of imprisonment authorized by law, the Commission shall also determine whether to impose a further term of supervised release to commence after the new term of imprisonment has been served. If the new term of imprisonment is limited to time served, any further term of supervised release shall commence upon the issuance of the Commission's order. Notwithstanding the above, if a releasee is serving another term of imprisonment of 30 days or more in connection with a conviction for a federal, state, or local crime (including a term of imprisonment resulting from a probation, parole, or supervised release revocation), a further term of supervised release imposed by the Commission under this paragraph shall not commence until that term of imprisonment has been served.

(c) A releasee whose term of supervised release is revoked by the Commission shall receive no credit for time spent on supervised release, including any time spent in confinement on other sentences (or in a halfway house as a condition of supervised release) prior to the execution of the Commission's warrant.

(d) The Commission's decision regarding the imposition of a term of imprisonment following revocation of supervised release, and any further term of supervised release, shall be made pursuant to the limitations set forth in § 2.219. Within those limitations, the appropriate length of any term of imprisonment shall be determined by reference to the guidelines at § 2.21. If the term of imprisonment authorized under § 2.219 is less than the minimum of the appropriate guideline range determined under § 2.21, the term authorized under § 2.219 shall be the guideline range.

(e) Whenever the Commission imposes a term of imprisonment upon revocation of supervised release that is less than the authorized maximum term of imprisonment, it shall be the Commission's general policy to impose a further term of supervised release that is the maximum term of supervised release permitted by § 2.219. If the Commission imposes a new term of imprisonment that is equal to the maximum term of imprisonment authorized by law (or in the case of a subsequent revocation, that uses up the remainder of the maximum term of imprisonment authorized by law), the Commission may not impose a further term of supervised release.

(f) Where deemed appropriate, the Commission may depart from the guidelines at § 2.21 (with respect to the imposition of a new term of imprisonment) in order to permit the imposition of a further term of supervised release.

(g) Decisions under this section shall be made upon the vote of one Commissioner, except that a decision to override an examiner panel recommendation shall require the

concurrence of two Commissioners. The final decision following a local revocation hearing shall be issued within 86 days of the retaking of the releasee on a supervised release violation warrant. The final decision following an institutional revocation hearing shall be issued within 21 days of the hearing, excluding weekends and holidays.

§ 2.219 Maximum terms of imprisonment and supervised release.

(a) *Imprisonment; first revocation.* When a term of supervised release is revoked, the maximum authorized term of imprisonment that the Commission may require the offender to serve, in accordance with D.C. Code 24–403.01(b)(7), is determined by reference to the maximum authorized term of imprisonment for the offense of conviction. The maximum authorized term of imprisonment at the first revocation shall be:

(1) Five years, if the maximum term of imprisonment authorized for the offense is life, or if the offense is statutorily designated as a Class A felony;

(2) Three years, if the maximum term of imprisonment authorized for the offense is 25 years or more, but less than life, and the offense is not statutorily designated as a Class A felony;

(3) Two years, if the maximum term of imprisonment authorized for the offense is 5 years or more, but less than 25 years; or

(4) One year, if the maximum term of imprisonment authorized for the offense is less than 5 years.

(b) *Further term of supervised release; first revocation.* (1) When a term of supervised release is revoked, and the Commission imposes less than the maximum term of imprisonment permitted by paragraph (a) of this section, the Commission may also impose a further term of supervised release after imprisonment. A term of imprisonment is ''less than the maximum authorized term of imprisonment'' if the term is one day or more shorter than the maximum authorized term of imprisonment.

(2) The maximum authorized length of such further term of supervised release shall be the original maximum term of supervised release that the sentencing court was authorized to impose for the offense of conviction, less the term of imprisonment imposed by the Commission upon revocation of supervised release. The original maximum authorized term of supervised release is as follows:

(i) Five years if the maximum term of imprisonment authorized for the offense is 25 years or more;

(ii) Three years if the maximum term of imprisonment authorized for the offense is more than one year but less than 25 years; and

(iii) Life if the person is required to register for life, and 10 years in any other case, if the offender has been sentenced for an offense for which registration is required by the Sex Offender Registration Act of 1999.

(3) For example, if the maximum authorized term of imprisonment at the first revocation is three years and the original maximum authorized term of supervised release is five years, the Commission may impose a three-year term of imprisonment with no supervised release to follow, or any term of imprisonment of less than three years with a further term of supervised release of five years minus the term of imprisonment actually imposed (such as a one-year term of imprisonment followed by a four-year term of supervised release, or a two-year term of imprisonment followed by a three-year term of supervised release).

(c) *Reference table.* The following table may be used in most cases as a reference to determine both the maximum authorized term of imprisonment at the first revocation and the original maximum authorized term of supervised release:

D.C. Code reference for conviction offense (former code reference in brackets)	Offense description	Original maximum authorized term of supervised release	Maximum authorized term of imprisonment at the first revocation
Title 22			
22–301 [22–401]	Arson	3 years	2 years.
22–302 [22–402]	Arson: own property	3 years	2 years.
22–303 [22–403]	Destruction of property over $200	3 years	2 years.
22–401 [22–501]	Assault: with intent to kill/rob/poison, to commit sex abuse (1st or 2nd degree) or child sex abuse.	3 years (10 years if SOR).	2 years.
22–401, 4502 [22–501, 3202].	Assault: with intent to kill etc. while armed*	5 years (10 years if SOR).	5 years.
22–402 [22–502]	Assault: with a dangerous weapon	3 years	2 years.
22–403 [22–503]	Assault: with intent to commit an offense other than those in § 22–401.	3 years	2 years.
22–404(d) [22–504]	Stalking—2nd+ offense	3 years	1 year.
22–404.01, 4502 [22–504.1, 3202].	Assault; aggravated while armed*	5 years	5 years.
22–404.01(b) [22–504.1]	Assault: aggravated	3 years	2 years.
22–404.01(c) [22–504.1]	Assault: attempted aggravated	3 years	2 years.
22–405(a) [22–505]	Assault: on a police officer	3 years	2 years.
22–405(b) [22–505]	Assault: on a police officer while armed	3 years	2 years.
22–406 [22–506]	Mayhem/malicious disfigurement	3 years	2 years.
22–406, 4502 [22–506, 3202].	Mayhem/malicious disfigurement armed*	5 years	5 years.
22–501 [22–601]	Bigamy	3 years	2 years.
22–601 [22–3427]	Breaking and entering machines	3 years	1 year.
22–704(a)	Corrupt influence	3 years	2 years.
22–712(c)	Bribery: public servant	3 years	2 years.
22–713(c)	Bribery: witness	3 years	2 years.
22–722(b)	Obstructing justice*	5 years	5 years.
22–723(b)	Evidence tampering	3 years	1 year.
22–801(a) [22–1801]	Burglary 1st degree	5 years	3 years
22–801(b) [22–1801]	Burglary 2nd degree	3 years	2 years.
22–801, 4502 [22–1801, 3202].	Burglary: armed*	5 years	5 years
22–902(b)(2) [22–752]	Counterfeiting (see statute for offense circumstances)	3 years	1 year.

D.C. Code reference for conviction offense (former code reference in brackets)	Offense description	Original maximum authorized term of supervised release	Maximum authorized term of imprisonment at the first revocation
22–902(b)(3) [22–752]	Counterfeiting (see statute for offense circumstances)	3 years	2 years.
22–1101(a), (c)(1) [22–901]	Cruelty to children 1st degree	3 years	2 years.
22–1101(b), (c)(2) [22–901]	Cruelty to children 2nd degree	3 years	2 years.
22–1322(d) [22–1122]	Inciting riot (with injury)	3 years	2 years
22–1403 [22–1303]	False personation	3 years	2 years.
22–1404 [22–1304]	Impersonating a public official	3 years	1 year.
22–1510 [22–1410]	Bad checks $100 or more	3 years	1 year.
22–1701 [22–1501]	Illegal lottery	3 years	1 year.
22–1704 [22–1504]	Gaming	3 years	2 years.
22–1710, 1711 [22–1510, 1511].	Bucketing: 2nd+ offense	3 years	2 years.
22–1713(a) [22–1513]	Corrupt influence: Athletics	3 years	2 years.
22–1803 [22–103]	Attempted crime of violence	3 years	2 years.
22–1804 [22–104]	Second conviction		
	One prior conviction		
	If the underlying offense is punishable by life imprisonment	5 years	5 years.
	If the underlying offense is punishable by 16⅔ years or more.	5 years	3 years.
	If the underlying offense is punishable by 3⅓ years or more but less than 16⅔ years.	3 years	2 years.
	If underlying offense is punishable by less than 3⅓ years	3 years	1 years.
	Two or more prior convictions		
	If the underlying offense is punishable by life imprisonment	5 years	5 years.
	If the underlying offense is punishable by 8⅓ years or more	5 years	3 years.
	If the underlying offense is punishable by 1⅔ years or more but less than 8⅓ years.	3 years	2 years.
	If underlying offense is punishable by less than 1⅔ years	3 years	1 year.
22–1804a(a)(1) [22–104a]	Three strikes for felonies *	5 years	5 years.
22–1804a(a)(2) [22–104a]	Three strikes for violent felonies *	5 years	5 years.
22–1805 [22–105]	Aiding or abetting	same as for the offense aided or abetted.	same as for the offense aided or abetted
22–1805a(a) [22–105a]	Conspiracy	3 years	2 years.
	If underlying offense is punishable by less than 5 years	3 years	1 year.
22–1806 [22–106]	Accessory after the fact		
	If the underlying offense is punishable by 10 years or more	3 years	2 years.
	If the underlying offense is punishable by more than 2 years but less than 10 years.	3 years	1 year.
22–1807 [22–107]	Offenses not covered by D.C. Code	3 years	2 years.
22–1810 [22–2307]	Threats (felony)	3 years	2 years.
22–1901	Incest	3 years (10 years if SOR).	2 years.
22–2001 [22–2101]	Kidnapping *	5 years	5 years.
22–2201, 4502 [22–2101, 3202].	Kidnapping: armed *	5 years	5 years.
22–2101, 2104 [22–2401, 2404].	Murder 1st degree *	5 years	5 years.
22–2101, 2104, 4502 [22–2401, 2404, 3202].	Murder 1st degree while armed *	5 years	5 years.
22–2102, 2104 [22–2402, 2404].	Murder 1st degree: obstruction of railway *	5 years	5 years.
22–2103, 2104 [22–2403, 2404].	Murder 2nd degree *	5 years	5 years.
22–2103, 2104, 4502 [22–2403, 2404, 3202].	Murder 2nd degree while armed *	5 years	5 years.
22–2105 [22–2405]	Manslaughter	5 years	3 years.
22–2105, 4502 [22–2405, 3202].	Manslaughter: armed *	5 years	5 years.
22–2201(e) [22–2001]	Obscenity: 2nd+ offense	3 years (10 years if SOR).	1 year.
22–2402(b) [22–2511]	Perjury	3 years	2 years.
22–2403 [22–2512]	Subornation of perjury	3 years	2 years.
22–2404(b) [22–2413]	False swearing	3 years	1 year.
22–2501 [22–3601]	Possessing implements of crime 2nd+ offense	3 years	2 years.
22–2601(b)	Escape	3 years	2 years.
22–2603	Introducing contraband into prison	3 years	2 years.
22–2704	Child prostitution: abducting or harboring	3 years (10 years if SOR).	2 years.
22–2705 to 2712	Prostitution: arranging and related offenses	3 years (10 years if child victim and SOR).	2 years.
22–2801 [22–2901]	Robbery	3 years	2 years.

D.C. Code reference for conviction offense (former code reference in brackets)	Offense description	Original maximum authorized term of supervised release	Maximum authorized term of imprisonment at the first revocation
22–2801, 4502 [22–2901, 3202].	Robbery: armed *	5 years	5 years.
22–2802 [22–2902]	Robbery: attempted	3 years	1 year.
22–2802, 4502 [22–2902, 3202].	Robbery: attempted while armed *	5 years	5 years.
22–2803(a) [22–2903]	Carjacking	3 years	2 years.
22–2803(b) [22–2903]	Carjacking: armed *	5 years	5 years.
22–3002 [22–4102]	Sex abuse 1st degree *	5 years (life if SOR)	5 years.
22–3002, 4502 [22–4102, 3202].	Sex abuse 1st degree while armed *	5 years (life if SOR)	5 years.
22–3003 [22–4103]	Sex abuse 2nd degree	3 years (life if SOR)	2 years.
22–3003, 4502 [22–4103, 3202].	Sex abuse 2nd degree while armed *	5 years (life if SOR)	5 years.
22–3004 [22–4104]	Sex abuse 3rd degree	3 years (10 years if SOR).	2 years.
22–3005 [22–4105	Sex abuse 4th degree	3 years (10 years if SOR).	2 years.
22–3008 [22–4108]	Child sex abuse 1st degree *	5 years (life if SOR)	5 years.
22–3008, 3020 [22–4108, 4120].	Child sex abuse 1st degree with aggravating circumstances *.	5 years (life if SOR)	5 years.
22–3008, 4502 [22–4108, 3202].	Child sex abuse 1st degree while armed *	5 years (10 years if SOR).	5 years.
22–3009 [22–4109]	Child sex abuse 2nd degree	3 years (10 years if SOR).	2 years.
22–3009, 4502 [22–4109, 3202].	Child sex abuse 2nd degree while armed *	5 years (10 years if SOR).	5 years.
22–3010 [22–4110]	Enticing a child	3 years (10 years if SOR).	2 years.
22–3013 [22–4113]	Sex abuse ward 1st degree	3 years (10 years if SOR).	2 years.
22–3014 [22–4114]	Sex abuse ward 2nd degree	3 years (10 years if SOR).	2 years.
22–3015 [22–4115]	Sex abuse patient 1st degree	3 years (10 years if SOR).	2 years.
22–3016 [22–4116]	Sex abuse patient 2nd degree	3 years (10 years if SOR).	2 years.
22–3018 [22–4118]	Sex abuse: attempted 1st degree/child sex abuse 1st degree.	3 years (life if SOR)	2 years.
22–3018 [22–4118]	Sex abuse: other attempts		
	If offense attempted is punishable by 10 years or more	3 years (life if SOR)	2 years.
	If the offense attempted is punishable by more than 2 years but less than 10 years.	3 years (life if SOR)	1 year.
22–3020 [22–4120]	Sex abuse 1st degree/child sex abuse 1st degree, with aggravating circumstances.	5 years (life if SOR)	5 years.
22–3020 [22–4120]	Sex abuse: other offenses with aggravating circumstances		
	If the underlying offense is punishable by life imprisonment	5 years (10 years if SOR).	5 years.
	If the underlying offense is punishable by 16⅔ years or more.	5 years (10 years if SOR).	3 years.
	If the underlying offense is punishable by 3⅓ years or more but less than 16⅔ years.	3 years (10 years if SOR).	2 years.
	If underlying offense is punishable by less than 3⅓ years	3 years (10 years if SOR).	1 year.
22–3102, 3103 [22–2012, 2013.	Sex performance with minors	3 years (10 years if SOR).	2 years.
22–3153	Terrorism—Act of Murder 1st degree	5 years	5 years.
	Murder of law enforcement officer or public safety employee	5 years	5 years.
	Murder 2nd degree	5 years	5 years.
	Manslaughter	5 years	5 years.
	Kidnapping	5 years	5 years.
	Assault with intent to kill	5 years	3 years.
	Mayhem/malicious disfigurement	3 years	2 years.
	Arson	3 years	2 years.
	Malicious destruction of property	3 years	2 years.
	Attempt/conspiracy to commit first degree murder, murder of law enforcement officer, second degree murder, manslaughter, kidnapping.	5 years	3 years.
	Attempt/conspiracy to commit assault with intent to kill	3 years	2 years.
	Attempt/conspiracy to commit mayhem, malicious disfigurement, arson, malicious destruction of property.	3 years	2 years.
	Providing or soliciting material support for act of terrorism	3 years	2 years.

D.C. Code reference for conviction offense (former code reference in brackets)	Offense description	Original maximum authorized term of supervised release	Maximum authorized term of imprisonment at the first revocation
22–3153, 22–4502 [22–3202].	Commiting any of the above acts of terrorism while armed *	5 years	5 years.
22–3154	Manufacture/possession of weapon of mass destruction	5 years	5 years.
	Attempt/conspiracy to possess or manufacture weapon of mass destruction.	5 years	3 years.
22–3155	Use, dissemination, or detonation of weapon of mass destruction.	5 years	5 years.
	Attempt/conspiracy to use, disseminate, or detonate weapon of mass destruction.	5 years	3 years.
22–3155, 22–4502 [22–3202].	Manufacture, possession, use or detonation of weapon of mass destruction while armed or attempts to commit such crimes while armed *.	5 years	5 years.
22–3212 [22–3812]	Theft 1st degree	3 years	2 years.
22–3214.03(d)(2) [22–3814.1].	Deceptive labeling	3 years	2 years.
22–3215(d)(1) [22–3815]	Vehicle: Unlawful use of (private)	3 years	2 years.
22–3215(d)(2) [22–3815]	Vehicle: Unlawful use of (rental)	3 years	1 year.
22–3221(a), 3222(a) [22–3821, 3822].	Fraud 1st degree $250 or more	3 years	2 years.
22–3221(b), 3222(b) [22–3821, 3822].	Fraud 2nd degree $250 or more	3 years	1 year.
22–3223(d)(1) [22–3823]	Fraud: credit card $250 or more	3 years	2 years.
22–3225.02, 3225.04(a) [22–3825.2, 3825.4].	Fraud: insurance 1st degree	3 years	2 years.
22–3225.03, 3225.04(b) [22–3825.3, 3825.4].	Fraud: insurance 2nd degree	3 years	2 years.
22–3231(d) [22–3831]	Stolen Property: trafficking in	3 years	2 years.
22–3232(c)(1) [22–3832]	Stolen property: receiving ($250 or more)	3 years	2 years.
22–3241, 3242 [22–3841, 3842].	Forgery:		
	Legal tender, public record, etc.	3 years.	2 years.
	Token, prescription	3 years	2 years.
	Other	3 years	1 years.
22–3251(b) [22–3851]	Extortion	3 years	2 years.
22–3251(b), 3252(b), 4502 [22–3851, 3852, 3202].	Extortion while armed or blackmail with threats of violence *	5 years	5 years.
22–3252(b) [22–3852]	Blackmail	3 years	2 years.
22–3303 [22–3103]	Grave robbing	3 years	1 year.
22–3305 [22–3105]	Destruction of property by explosives	3 years	2 years.
22–3318 [22–3318]	Water pollution (malicious)	3 years	1 year.
22–3319 [22–3119]	Obstructing railways	3 years	2 years.
22–3601 [22–3901]	Senior citizen victim of robbery, attempted robbery, theft, attempted theft, extortion, and fraud.		
	If the underlying offense is punishable by life imprisonment	5 years	5 years.
	If the underlying offense is punishable by 16⅔ years or more.	5 years	3 years.
	If the underlying offense is punishable by 3⅓ years or more but less than 16⅔ years.	3 years	2 years.
	If the underlying offense is punishable by less than 3⅓ years.	3 years	1 year.
22–3602 [22–3902]	Citizen patrol victim of various violent offenses.		
	If the underlying offense is punishable by life imprisonment	5 years	5 years.
	If the underlying offense is punishable by 16⅔ years or more.	5 years	3 years.
	If the underlying offense is punishable by 3⅓ years or more but less than 16⅔ years.	3 years	2 years.
	If the underlying offense is punishable by less than 3⅓ years.	3 years	1 year.
22–3703 [22–4003]	Bias-related crime		
	If underlying offense is punishable by life imprisonment	5 years	5 years.
	If underlying offense is punishable by 16⅔ years	5 years	3 years.
	If underlying offense is punishable by more than or equal to 3⅓ years but less than 16⅔ years.	3 years	2 years.
	If underlying offense is punishable by less than 3⅓ years	3 years	1 year.
22–4015 [24–2235]	Sex offender, failure to register (2nd offense)	3 years	2 years.
22–4502 [22–3202]	Violent crimes: committing or attempting to commit while armed.	5 years	5 years.
22–4502.01 [22–3202.1]	Gun-free zone violations		
	If underlying offense is a violation of 22–4504	3 years	2 years.
	If underlying offense is a violation of 22–4504(b) (possession of firearm while committing crime of violence or dangerous crime).	5 years	3 years.
22–4503 [22–3203]	Pistol: unlawful possession by a felon, etc. 2nd+ offense	3 years	2 years.

D.C. Code reference for conviction offense (former code reference in brackets)	Offense description	Original maximum authorized term of supervised release	Maximum authorized term of imprisonment at the first revocation
22–4504(a)(1)–(2) [22–3204].	Pistol: carrying without a license	3 years	2 years.
22–4504(b) [22–3204]	Firearm: possession while committing crime of violence or dangerous crime.	3 years	2 years.
22–4514 [22–3214]	Prohibited weapon: possession of 2nd+ offense	3 years	2 years.
22–4515a [22–3215a]	Molotov cocktails—1st or 2nd offense	3 years	2 years.
	3rd offense	5 years	5 years.
Title 23			
23–1327(a)(1)	Bail Reform Act	3 years	2 years.
23–1328(a)(1)	Committing a felony on release	3 years	2 years.
Title 48			
48–904.01(a)–(b) [33–541]	Drugs: distribute or possess with intent to distribute		
	If schedule I or II narcotics or abusive drugs (e.g., heroin, cocaine, PCP, methamphetamine).	5 years	3 years.
	If schedule I or II drugs other than above (e.g., marijuana/hashish), or schedule III drugs.	3 years	2 years.
	If schedule IV drugs	3 years	1 year.
48–904.01, 22–4502 [33–541, 22–3202].	Drugs: distribute or possess with intent to distribute while armed*.	5 years	5 years.
48–904.03 [33–543]	Drugs: acquiring by fraud	3 years	1 year.
48–904.03a [33–543a]	Drugs: maintaining place for manufacture or distribution	5 years	3 years.
48–904.06 [33–546]	Drugs: distribution to minors		
	If a schedule I or II narcotic drug (e.g., heroin or cocaine) or PCP.	5 years	3 years.
	If schedule I or II drugs other than above (e.g., marijuana, hashish, methamphetamine), or schedule III or IV drugs.	3 years	2 years.
	If schedule V drugs	3 years	1 year.
48–904.07 [33–547]	Drugs: enlisting minors to sell	3 years	2 years.
48–904.07a [33–547.1]	Drugs: distribute or possess with intent to distribute in drug-free zones.		
	If schedule I or II narcotics or abusive drugs (e.g., heroin, cocaine, methamphetamine, or PCP).	5 years	3 years.
	If schedule I or II drugs other than above (e.g., marijuana, hashish), or schedule III or IV drugs.	3 years	2 years.
	If schedule V drugs	3 years	1 year.
48–904.08 [33–548]	Drugs: 2nd+ offense		
Note: This section does not apply if the offender was sentenced under 48–904.06.	If schedule I or II narcotics or abusive drugs (e.g., heroin, cocaine, methamphetamine, or PCP).	5 years	3 years.
	If schedule I or II drugs other than above (e.g., marijuana, hashish), or schedule III or IV drugs.	3 years	2 years.
	If schedule V drugs	3 years	1 year.
48–904.09 [33–549]	Drugs: attempt/conspiracy	the same as for the offense that was the object of the attempt or conspiracy.	the same as for the offense that was the object of the attempt or conspiracy.
48–1103(b) [33–603]	Drugs: possession of drug paraphernalia with intent to deliver or sell (2nd + offense).	3 years	1 year.
48–1103(c) [33–603]	Drugs: delivering drug paraphernalia to a minor	3 years	2 years.
Title 50			
50–2203.01 [40–713]	Negligent homicide (vehicular)	3 years	2 years.
50–2207.01 [40–718]	Smoke screens	3 years	2 years.

Notes: (1) An asterisk next to the offense description indicates that the offense is statutorily designated as a Class A felony.

(2) If the defendant must register as a sex offender, the Original Maximum Authorized Term of Supervised Release is the maximum period for which the offender may be required to register as a sex offender under D.C. Code 22–4002(a) and (b) (ten years or life). *See* D.C. Code 24–403.01(b)(4). Sex offender registration is required for crimes such as first degree sexual abuse, and these crimes are listed in this table with the notation ''10 years if SOR'' or ''life if SOR'' as the Original Maximum Authorized Term of Supervised Release. Sex offender registration, however, may also be required for numerous crimes (such as burglary or murder) if a sexual act or contact was involved or was the offender's purpose. In such cases, the offender's status will be determined by the presence of an order from the sentencing judge certifying that the defendant is a sex offender.

(3) If the defendant committed the offense before 5 p.m., August 11, 2000, the maximum authorized terms of imprisonment and supervised release shall be determined by reference to 18 U.S.C. 3583.

(d) *Imprisonment; successive revocations.* (1) When the Commission revokes a term of supervised release that was imposed by the Commission after a previous revocation of supervised release, the maximum authorized term of imprisonment is the maximum term of imprisonment permitted by paragraph (a) of this section, less the term or terms of imprisonment that were previously imposed by the Commission. In calculating such previously-imposed term or terms of imprisonment, the

Commission shall use the term as imposed without deducting any good time credits that may have been earned by the offender prior to his release from prison. In no case shall the total of successive terms of imprisonment imposed by the Commission exceed the maximum authorized term of imprisonment at the first revocation.

(2) For example, if the maximum authorized term of imprisonment at the first revocation is three years and the original maximum authorized term of supervised release is five years, the Commission at the first revocation may have imposed a one-year term of imprisonment and a further four-year term of supervised release. At the second revocation, the maximum authorized term of imprisonment will be two years, *i.e.*, the maximum authorized term of imprisonment at the first revocation (three years) minus the one-year term of imprisonment that was imposed at the first revocation.

(e) *Further term of supervised release; successive revocations.* (1) When the Commission revokes a term of supervised release that was imposed by the Commission following a previous revocation of supervised release, the Commission may also impose a further term of supervised release. The maximum authorized length of such a term of supervised release shall be the original maximum authorized term of supervised release permitted by paragraph (b) of this section, less the total of the terms of imprisonment imposed by the Commission on the same sentence (including the term of imprisonment imposed in the current revocation).

(2) For example, if the maximum authorized term of imprisonment at the first revocation is three years and the original maximum authorized term of supervised release is five years, the Commission at the first revocation may have imposed a one-year term of imprisonment and a four-year further term of supervised release. If, at a second revocation, the Commission imposes another one-year term of imprisonment, the maximum authorized further term of supervised release will be three years (the original five-year period minus the total of two years of imprisonment).

(f) *Effect of sentencing court imposing less than the original maximum authorized term of supervised release.* If the Commission has revoked supervised release, the maximum authorized period of further supervised release is determined by reference to the original maximum authorized term permitted for the offense of conviction (see paragraph (b) of this section), even if the sentencing court did not impose the original maximum authorized term permitted for the offense of conviction.

§ 2.220 Appeal.

A supervised releasee may appeal to the Commission a decision to revoke supervised release, impose a term of imprisonment, or impose a new term of supervised release after revocation. The provisions of § 2.26 on the time limits for filing and deciding the appeal, the grounds for appeal, the format of the appeal, the limits regarding the submission of exhibits, and voting requirements apply to an appeal submitted under this section.

Dated: June 30, 2003.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 03–17176 Filed 7–14–03; 8:45 am]

BILLING CODE 4410–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in August 2003. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: August 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during August 2003, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during August 2003, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during August 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 4.40 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions represent an increase (from those in effect for July 2003) of 0.10 percent for the first 20 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for July 2003.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that

the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during August 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 118, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*		*		*
118	8–1–03	9–1–03	3.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 118, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*		*		*
118	8–1–03	9–1–03	3.00	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*		*
August 2003	.0440	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of July 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–17843 Filed 7–14–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–047]

Drawbridge Operation Regulations: Mystic River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the U.S. 1 Bridge, mile 2.8, across the Mystic River at Mystic, Connecticut. This temporary deviation replaces the temporary deviation published on June 2, 2003, and is necessary to test a new operating schedule to determine if a permanent change to the schedule is reasonable. The deviation published on June 2, 2003, is withdrawn.

DATES: The temporary deviation published on June 2, 2003, at 68 FR 32643 is withdrawn July 15, 2003. This temporary deviation is effective from July 18, 2003 through October 15, 2003. Comments must reach the Coast Guard on or before November 15, 2003.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, Bridge Branch, at 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this deviation. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this evaluation of the test deviation by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this deviation (CGD01–03–047), 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 if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background and Purpose

The U.S. 1 Bridge has a vertical clearance of 4 feet at mean high water and 7 feet at mean low water in the closed position.

The existing regulations in 33 CFR 117.211(b), require the bridge to open on signal with a maximum delay of up to twenty minutes; except that from May 1 through October 31, from 7:15 a.m. to 7:15 p.m., the draw need only open once an hour, at quarter past the hour and from November 1 through April 30, from 8 p.m. to 4 a.m., the draw must open on signal after a six-hour advance notice is given.

On May 13, 2003, the Mystic Connecticut Chamber of Commerce and Marine Affairs Committee, requested that the U.S. 1 Bridge opening schedule be temporarily changed to test an alternate operation schedule.

At the request of the Mystic Chamber of Commerce and Marine Affairs Committee, the Commander, First Coast Guard District, issued a temporary deviation from the drawbridge operation regulations on May 20, 2003. That temporary deviation, notice of which was published in the **Federal Register** on June 2, 2003, at 68 FR 32643, authorized an alternate operating schedule effective from June 15, 2003 through August 31, 2003. The purpose of the temporary deviation was to test an alternate operation schedule and collect vehicular traffic data.

On May 30, 2003, the Coast Guard received a second letter from the Mystic Chamber of Commerce and Marine Affairs Committee. The Mystic Chamber of Commerce and Marine Affairs Committee requested that the effective period of the temporary deviation be changed to allow the bridge to operate under the alternate operation schedule from July 18, 2003 through October 15, 2003, and that the hourly daily operating schedule end at 6:40 p.m. instead of 7:40 p.m.

The District Commander issued a new test deviation as requested by the Mystic Chamber of Commerce and Marine Affairs Committee. This deviation allows the bridge to operate under the alternate operation schedule from July 18, 2003 through October 15, 2003, during the peak boating season.

Under this temporary deviation, effective from July 18, 2003 through October 15, 2003, the draw of the U.S. 1 Bridge shall open promptly and fully on signal; except that, from 7:40 a.m. to 6:40 p.m., daily, the draw shall open at 7:40 a.m., 8:40 a.m., 9:40 a.m., 10:40 a.m., 11:40 a.m., 1:10 p.m., 1:40 p.m., 2:40 p.m., 3:40 p.m., 4:40 p.m., 5:40 p.m., and 6:40 p.m.

After October 15, 2003, the bridge will operate in accordance with the existing drawbridge operation regulations.

This temporary deviation also eliminates the provision that permits openings to be delayed up to 20 minutes after an opening request is given. Under this temporary deviation, the bridge must open promptly and fully upon request, in accordance with 33 CFR 117.5.

This deviation from the operating regulations is authorized under 33 CFR 117.43, to test an alternate operating schedule.

Dated: June 6, 2003.

John L. Grenier,

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

[FR Doc. 03–17368 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–073]

RIN 1625–AA00

Security Zone; Cape Fear River, Eagle Island, North Carolina State Port Authority Terminal, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary security zone to include an area 800 yards south of the Cape Fear River Bridge encompassing Eagle Island, the Cape Fear River, and the grounds of the State Port Authority Terminal south to South Wilmington

Terminal. This action is necessary to provide security for and prevent acts of terrorist against vessels loading or offloading and the State Port Authority Terminal during a military operation. The security zone will prevent access to unauthorized persons who may attempt to enter the secure area via Eagle Island, the Cape Fear River, or the North Carolina State Port Authority Terminal.

DATES: This rule is effective from 8 a.m. EST on June 13, 2003, to 11:59 p.m. EST on December 13, 2003. Comments are due on or before October 14, 2003.

ADDRESSES: Comments and documents indicated in this preamble as being available in the docket are part of docket CGD05–03–073 and will be available for inspection or copying at Coast Guard Marine Safety Office, 721 Medical Center Drive, Suite 100, Wilmington, North Carolina 28401, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Diego Benavides, Port Security, (910) 772–2232.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments on this temporary rule to our docket listed under **ADDRESSES.** If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–03–073), indicate the specific section of this document to which each comments applies, and give the reason for each comment. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and related material received during the comment period and we may change this temporary rule in view of them.

Regulatory Information

The U.S. Coast Guard did not publish a notice of proposed rulemaking (NPRM) for this regulation. The Coast Guard is promulgating these security zone regulations to protect the Wilmington State Port and the surrounding vicinity for reasons directly related to military operations and national security. Based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rulemaking and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation. As stated in our ''Request for Comments'' section, however, we do encourage you to comment on this currently-effective temporary rule. This temporary security zone is necessary to provide for the security of the United States.

Background and Purpose

The security zone will prevent access to unauthorized persons who may attempt to enter the secure area via Eagle Island, the Cape Fear River, or the North Carolina State Port Authority terminal.

Discussion of Rule

To provide security for, and prevent acts of terrorism against, vessels loading or offloading and the State Port Authority Terminal during a military operation , the security zone will prevent access to unauthorized persons who may attempt to enter the secure area via the Cape Fear River, the North Carolina State Port Authority terminal, or use Eagle Island as vantage point for surveillance of the secure area. This rule limits access to the regulated area to those vessels and persons authorized to enter and operate within the security zone. The Captain of the Port or her designated representative may authorize access to the security zone. Mariners must contact the control vessel on VHF–FM channel 16 to request access to transit through the regulated area. In addition, the Coast Guard will make notifications via maritime advisories.

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).

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) the COTP or her representative may authorize access to the security zone; (ii) the security zone will be in effect for limited duration; and (iii) 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), the U.S. Coast Guard 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 rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels or vehicles intending to transit or anchor within waters or grounds of the security zone (including the North Carolina State Port Authority Terminal and the southern portion of Eagle Island) encompassed by a line connecting the following points: from South Wilmington Terminal at 34°10′38.394″ W, 077°57′16.248″ N (Point 1); across Cape Fear River to Southern most entrance of Brunswick River on the West Bank at 34°10′38.052″ W, 077°57′43.143″ N (Point 2); extending along the West bank of the Brunswick River for approximately 750 yards to 34°10′57.062″ W, 077°58′01.342″ N (Point 3); proceeding north across the Brunswick River to the east bank at 34°11′04.846″ W, 077°58′02.861″ N (Point 4); continuing north on the east bank for approximately 5000 yards along Eagle Island to 34°13′17.815″ W, 077°58′30.671″ N (Point 5), proceeding east to 34°13′19.488″ W, 077°58′24.414″ N (Point 6); then approximately 1700 yards to 34°13′27.169″ W, 077°57′51.753″ N (Point 7); proceeding east to 34°13′21.226″ W, 077°57′19.264″ N (Point 8); then across Cape Fear River to the northeast corner of the Colonial Terminal Pier at 34°13′18.724″ W, 077°57′07.401″ N (Point 9) 800 yards south of Cape Fear Memorial Bridge; proceeding south along shoreline (east bank) of Cape Fear River for approximately 500 yards; proceeding east inland to Wilmington State Port property line at 34°13′03.196″ W, 077°56′52.211″ N (Point 10); extending south along Wilmington State Port property line to 34°12′43.409″ W, 077°56′50.815″ N (Point 11); proceeding to the north entrance of Wilmington State Port at 34°12′28.854″ W, 077°57′01.017″ N (Point 12); proceeding south along Wilmington State Port property line to 34°12′20.819″ W, 077°57′08.871″ N (Point 13); continuing south along the Wilmington State Port property line to 34°12′08.164″ W, 077°57′08.530″ N (Point 14); continuing along State Port property to 34°11′44.426″ W, 077°56′55.003″ N (Point 15); proceeding south to the main gate of the Wilmington State Port at

34°11′29.578″ W, 077°56′55.240″ N (Point 16); proceeding south approximately 750 yards to the southeast property corner of the Apex facility at 34°11′10.936″ W, 077°57′04.798″ N (Point 17); proceeding west to east bank of Cape Fear River at 34°11′11.092″ W, 077°57′17.146″ N (Point 18); and proceeding south along East bank of Cape Fear River to original point of origin at 34°10′38.394″ W, 077°57′16.248″ N (Point 1).

This security zone is in effect from 8 a.m. EST on June 13, 2003, to 11:59 p.m. EST on December 13, 2003.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the U.S. Coast Guard offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **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 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 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. The U.S. Coast Guard has analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule 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 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 U.S. Coast Guard has 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 may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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

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

Environment

The U.S. Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule establishes a 6-month security zone.

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. 1226, 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–073 to read as follows:

§ 165.T05–073 Security Zone: Cape Fear River, Eagle Island and North Carolina State Port Authority Terminal, Wilmington, NC.

(a) *Location.* The following area is a security zone: All waters and grounds, including the North Carolina State Port Authority Terminal and the southern portion of Eagle Island, encompassed by a line connecting the following points: from South Wilmington Terminal at 34°10′38.394″ W, 077°57′16.248″ N (Point 1); across Cape Fear River to Southern most entrance of Brunswick River on the West Bank at 34°10′38.052″ W, 077°57′43.143″ N (Point 2); extending along the West bank of the Brunswick River for approximately 750 yards to 34°10′57.062″ W, 077°58′01.342° N (Point 3); proceeding north across the Brunswick River to the east bank at 34°11′04.846″ W, 077°58′02.861″ N (Point 4); continuing north on the east bank for approximately 5000 yards along Eagle Island to 34°13′17.815″ W, 077°58′30.671″ N (Point 5), proceeding east to 34°13′19.488″ W, 077°58′24.414″ N (Point 6); then approximately 1700 yards to 34°13′27.169″ W, 077°57′51.753″ N (Point 7); proceeding east to 34°13′21.226″ W, 077°57′19.264″ N (Point 8); then across Cape Fear River to the northeast corner of the Colonial Terminal Pier at 34°13′18.724″ W, 077°57′07.401″ N (Point 9) 800 yards south of Cape Fear Memorial Bridge;

proceeding south along shoreline (east bank) of Cape Fear River for approximately 500 yards; proceeding east inland to Wilmington State Port property line at 34°13′03.196″ W, 077°56′52.211″ N (Point 10); extending south along Wilmington State Port property line to 34°12′43.409″ W, 077°56′50.815″ N (Point 11); proceeding to the north entrance of Wilmington State Port at 34°12′28.854″ W, 077°57′01.017″ N (Point 12); proceeding south along Wilmington State Port property line to 34°12′20.819″ W, 077°57′08.871″ N (Point 13); continuing south along the Wilmington State Port property line to 34°12′08.164″ W, 077°57′08.530″ N (Point 14); continuing along State Port property to 34°11′44.426″ W, 077°56′55.003″ N (Point 15); proceeding south to the main gate of the Wilmington State Port at 34°11′29.578″ W, 077°56′55.240″ N (Point 16); proceeding south approximately 750 yards to the southeast property corner of the Apex facility at 34°11′10.936″ W, 077°57′04.798″ N (Point 17); proceeding west to east bank of Cape Fear River at 34°11′11.092″ W, 077°57′17.146″ N (Point 18); and proceeding south along East bank of Cape Fear River to original point of origin at 34°10′38.394″ W, 077°57′16.248″ N (Point 1).

(b) *Captain of the Port.* For purposes of this section, *Captain of the Port* means the Commanding Officer of the Marine Safety Office Wilmington, NC, or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on her behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in 33 CFR 165.33.

(2) Persons or vessels requiring entry into or passage within the zone must first request authorization from the Captain of the Port or her designated representative. The Captain of the Port's representative enforcing the zone can be contacted on VHF marine band radio, channel 16. The Captain of the Port can be contacted at (910) 772–2200.

(3) The operator of any vessel within this security zone shall:

(i) Stop the vessel immediately upon being directed to do so by the Captain of the Port or her designated representative.

(ii) Proceed as directed by the Captain of the Port or her designated representative.

(d) *Effective period.* This section is effective from 8 a.m. EST on June 13, 2003, to 11:59 p.m. EST on December 13, 2003.

Dated: June 13, 2003.

Jane M. Hartley,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, North Carolina.

[FR Doc. 03–17836 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–232]

RIN 1625–AA00

Safety Zone; Red Bull Wings Over Cleveland, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish two safety zones during the Red Bull Wings Over Cleveland in Lake Erie and the Port of Cleveland, Ohio. These safety zones are necessary to control vessel traffic within the immediate vicinity of both barges to protect competitors and course obstacles (wind blades and landing zone markers) from excessive speed and wakes, and to prevent interference with the competition. These safety zone are intended to restrict vessel traffic from a portion of Cleveland Harbor, Lake Erie.

DATES: This rule is effective from 7 a.m. on Thursday, July 31, 2003 through 9 p.m. on Saturday, August 2, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD09–03–232 and are available for inspection or copying at Coast Guard MSO Cleveland between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, Chief Port Operations Department, Coast Guard MSO Cleveland at (216) 937–0128.

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. This determination was based on the size and location of the safety zones within the waterways, and vessels can still transit around the safety zones. More importantly, publishing an NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule's effective date is contrary to public safety because immediate action is necessary to protect the public, spectators and participants in the event.

For the same reasons, 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**.

Background and Purpose

Red Bull Wings Over Cleveland is an aerial paragliding and skydiving competition over Cleveland Harbor. Competitors will launch from either a barge moored approximately one mile off Voinovich Park in Lake Erie, or from an airplane, and attempt to land on another barge moored approximately 100 ft off Voinovich Park. A safety zone will be established around both barges to protect competitors and course obstacles (wind blades and landing zone markers) from excessive speed and wakes, and to prevent interference with the competition.

Discussion of Proposed Rule

The safety zones will be established from 7 a.m. on Thursday, July 31, 2003 until 9 p.m. on Saturday, August 2, 2003. The safety zones will be established around the two barges used for the competition. No vessel shall enter the safety zone without the permission of the COTP or the on-scene representative, the Patrol Commander.

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 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 the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the size and location of the safety zones within the waterways.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 rule would not have a significant economic impact on a substantial number of small entities.

This 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 the safety zones.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zones do not block a navigable channel and vessels can safely transit around the safety zones. Before the effective period, the Coast Guard will issue maritime advisories to users who might be impacted through notification in the **Federal Register**, the Ninth Coast Guard District Local Notice to Mariners, and through Marine Information Broadcasts. Additionally, the Coast Guard has not received any reports from small entities negatively affected during previous similar events.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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 Cleveland (*see* **ADDRESSES**.)

Collection of Information

This 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 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) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule 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 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 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 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

The Coast Guard has 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 under Commandant Instruction M16475.1C, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under Section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under Figure 2–1, paragraph 35(a) of the Instruction, 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 in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 7 a.m. on July 31, 2003 through 9 p.m. on August 2, 2003 add temporary § 165.T09–232 to read as follows:

§ 165.T09–232 Safety Zones; Red Bull Wings Over Cleveland, Cleveland, OH.

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

(1) All waters of Cleveland Harbor bounded by the arc of a circle with a 200-yard radius with its center at approximate position 41°30′41″ N, 081°41′51″ W. These coordinates are based upon North American Datum 1983 (NAD 83).

(2) All waters of Lake Erie bounded by the arc of a circle with a 200-yard radius with its center at approximate position 41°31′23″ N, 081°42′30″ W (NAD 83).

(b) *Enforcement period.* This section will be in effect from 7 a.m. on Thursday, July 31, 2003 until 9 p.m. on Saturday, August 2, 2003.

(c) *Regulations.* No vessel shall enter the safety zones. Permission to deviate from the above rules must be obtained from the Captain of the Port or the

Patrol Commander via VHF/FM radio, Channel 16 or by telephone at (216) 937–0111.

Dated: July 2, 2003.

Lorne W. Thomas,

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

[FR Doc. 03–17835 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–072]

RIN 1625–AA00

Security Zone; Bogue Sound, Morehead City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone around the grounds of the North Carolina State Port Authority Terminal at Morehead City south of Highway 70 and the waters of Beauford Inlet Bogue Sound. This action is necessary to provide security for vessels involved in loading or offloading operations and the State Port Authority Terminal during a military operation. The security zone will prevent access to unauthorized persons who may attempt to enter the secure area via Bogue Sound or the North Carolina State Port Authority Terminal.

DATES: This rule is effective from 8 a.m. EST on June 13, 2003, to 11:59 p.m. EST on December 13, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD–05–03–072 and are available for inspection or copying at Coast Guard Marine Safety Office, 721 Medical Center Drive, Suite 100, Wilmington, North Carolina 28401, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Diego Benavides, Port Security, (910) 772–2232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. The Coast Guard is promulgating these security zone regulations to protect vessels loading or offloading and the surrounding vicinity for reasons directly related to military operations and national security. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rulemaking and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation. This temporary security zone is necessary to provide for the security of the United States.

Background and Purpose

The security zone is designed to prevent access by unauthorized persons who may attempt to enter the secure area via Bogue Sound and the North Carolina State Port Authority terminal.

Discussion of Rule

For security reasons, this rule limits access to the regulated area to those vessels and persons authorized to enter and operate within the security zone. The Captain of the Port or her designated representative may authorize access to the security zone. Mariners must contact the control vessel on VHF-FM channel 16 to request access to transit through the regulated area. In addition, the Coast Guard will make notifications via maritime advisories.

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).

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) The COTP or her representative may authorize access to the security zone; (ii) the security zone will be in effect for limited duration; and (iii) 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 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 rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor within the security zone while it is in effect. The security zone encompasses the water areas of Beaufort Inlet and Bogue Sound within a line connecting the following points: beginning at 34°42′53″ N, 076°41′12″ W (Point 1); extending north along the western shore of Radio Island to 34°43′24″ N, 076°41′9″ W (Point 2); extending westward 2300 yards to 34°43′16″ N, 076°42′48″ W (Point 3); extending approximately 400 yards west to 34°43′8″ N, 076°43′ W (Point 4); extending south approximately 760 yards to 34°42′74″ N, 076°83′ W (Point 5); extending southeast approximately 2450 yards to 34°41′94″ N, 076°41′68″ W (Point 6); extending northeast approximately 1000 yards 34°42′53″ N, 076°41′12″ W (Point 1). And personnel attempting to enter the portion of the grounds of the North Carolina State Port Authority Terminal at Morehead City south of Highway 70 while the security zone 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 offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **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 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 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 rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule 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 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 may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This rule establishes a 6-month security zone.

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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.

■ 2. Add § 165.T05–072 to read as follows:

§ 165.T05–072 Security Zone: Bogue Sound and North Carolina State Port Authority Terminal, Morehead City, NC.

(a) *Location.* The following area is a security zone: All waters and grounds within the North Carolina State Port Authority Terminal south of Highway 70; and all waters of Beaufort Inlet and Bogue Sound encompassed by a line connecting the following points: beginning at 34°42′53″ N, 076°41′12″ W (Point 1); extending north along the western shore of Radio Island to 34°43′24″ N, 076°41′9″ W (Point 2); extending westward 2300 yards to 34°43′16″ N, 076°42′48″ W (Point 3); extending approximately 400 yards west to 34°43′8″ N, 076°43′ W (Point 4); extending south approximately 760 yards to 34°42′74″ N, 076°83′ W (Point 5); extending southeast approximately 2450 yards to 34°41′94″ N, 076°41′68″ W (Point 6); and extending northeast approximately 1000 yards to 34°42′53″ N, 076°41′12″ W (Point 1).

(b) *Captain of the Port.* For the purposes of this section, *Captain of the Port* means the Commanding Officer of the Marine Safety Office Wilmington, NC, or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on her behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in 33 CFR 165.33.

(2) Persons or vessels requiring entry into or passage within the zone must first request authorization from the Captain of the Port or her designated representative. The Captain of the Port's representative enforcing the zone can be contacted on VHF marine band radio, channel 16. The Captain of the Port can be contacted at (910) 231–1847.

(3) The operator of any vessel within this security zone must:

(i) stop the vessel immediately upon being directed to do so by the Captain of the Port or her designated representative.

(ii) proceed as directed by the Captain of the Port or her designated representative.

(d) *Effective period.* This section is in effect from 8 a.m. EST on June 13, 2003, to 11:59 p.m. EST on December 13, 2003.

Dated: June 13, 2003.

Jane M. Hartley,

Captain, Coast Guard, Captain of the Port, Wilmington, North Carolina.

[FR Doc. 03–17834 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–074]

RIN 1625–AA00

Security Zone; Military Ocean Terminal Sunny Point, Cape Fear River, Brunswick County, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for the Military Ocean Terminal Sunny Point, North Carolina. This action is necessary to provide security for the facility during a military operation. The security zone will prevent access to unauthorized persons who may attempt to enter the secure area via the Cape

Fear River and waters adjacent to Military Ocean Terminal Sunny Point.

DATES: This rule is effective from 8 a.m. EST on June 13, 2003, to 11:59 p.m. EST on December 13, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–074 and are available for inspection or copying at Coast Guard Marine Safety Office, 721 Medical Center Drive, Suite 100, Wilmington, North Carolina 28401, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ensign Diego Benavides, Port Security, (910) 772–2232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. The Coast Guard is promulgating these security zone regulations to protect Military Ocean Terminal Sunny Point, NC, and the surrounding vicinity for reasons directly related to military operations and national security. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice-and-comment rulemaking and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation. This temporary security zone is necessary to provide for the security of the United States.

Background and Purpose

The security zone will prevent access to unauthorized persons who may attempt to enter the secure area via the Cape Fear River and waters adjacent to Military Ocean Terminal Sunny Point, NC.

Discussion of Rule

For security reasons, this rule limits access to the regulated area to those vessels and persons authorized to enter and operate within the security zone. The Captain of the Port or her designated representative may authorize access to the security zone. Mariners must contact the control vessel on VHF-FM channel 16 to request access to transit through the regulated area. In addition, the Coast Guard will make notifications via maritime advisories.

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).

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) The COTP or her representative may authorize access to the security zone; (ii) the security zone will be in effect for limited duration; and (iii) 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 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 rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in the vicinity of Military Ocean Terminal Sunny Point, and entering an area encompassed by a line connecting the following points: The northern tip of the security zone is at 34°02′02″ N, 077°56′36″ W near Light 9; extending south along the shore to 34°00′00″ N, 077°57′15″ W; proceeding to the southern most tip of the zone at 33°59′10″ N, 077°57′0″ W at Light 71; and then proceeding north to 34§ 00'39'' N, 077°56′ 25″ W at Buoy 31.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **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 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 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 rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule 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 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 may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule establishes a 6-month security zone.

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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–074 to read as follows:

§ 165.T05–074 Security Zone: Military Ocean Terminal Sunny Point and Lower Cape Fear River, NC.

(a) *Location.* The following area is a security zone: The area and waters encompassed by a line connecting the following points: the northern tip of the security zone is at 34°02′02″ N, 077°56′36″ W near Light 9, extending south along the shore to 34°00′00″ N, 077°57′15″ W;, proceeding to the southern most tip of the zone at 33°59′10″ N, 077°57′0″ W at Light 71; and then proceeding north to 34°00′39″ N, 077°56′25″ W at Buoy 31.

(b) *Captain of the Port.* For purposes of this section, *Captain of the Port* means the Commanding Officer of the Marine Safety Office Wilmington, NC, or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on her behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing security zones in 33 CFR 165.33.

(2) Persons or vessels requiring entry into or passage within the zone must first request authorization from the Captain of the Port or her designated representative. The Captain of the Port's representative enforcing the zone can be contacted on VHF marine band radio, channel 16. The Captain of the Port can be contacted at (910) 231–1847.

(3) The operator of any vessel within this security zone must:

(i) Stop the vessel immediately upon being directed to do so by the Captain of the Port or her designated representative.

(ii) Proceed as directed by the Captain of the Port or her designated representative.

(d) *Effective period.* This section is in effect from 8 a.m. EST, on June 13, 2003, to 11:59 p.m. EST, on December 13, 2003.

Dated: June 13, 2003.

Jane M. Hartley,

Captain, Coast Guard, Captain of the Port, Wilmington, North Carolina.

[FR Doc. 03–17833 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2038; MM Docket No. 02–382; RM–10615]

Radio Broadcasting Services; Bridgeton, Pennsauken, NJ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document at the request of Cohanzick Broadcasting Corporation, licensee of Station WSNJ–FM and New Jersey Radio Partners, Inc, substitutes Channel 300A for Channel 299B at Bridgeton, New Jersey, reallots Channel 300A from Bridgeton to Pennsauken, New Jersey, as the community's first local transmission service, and modifies the license for Station WSNJ–FM to reflect the change. Opposing comments were filed by the School District of Haverford Township, licensee of Class D Station WHHS, Channel 300D, Havertown, Pennsylvania, West Windsor Plainsboro Regional School District, licensee of Class D Station WWPH, Channel 300D, Princeton, New Jersey, and David Brouda and David C. Weston, former students at Haverford Township. Channel 300A is allotted at Pennsauken at a site 6.1 kilometers (3.8 miles) northeast of the community at coordinates 40–00–12 NL and 75–01–19 WL.

DATES: Effective August 7, 2003.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–382, adopted June 18, 2003, and released June 23, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New Jersey, is amended by removing Bridgeton, Channel 300A and by adding Pennsauken, Channel 300A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–17832 Filed 7–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[021213308–3165–02, I.D. 111802B]

RIN 0648–AQ60

List of Fisheries for 2003

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing its final List of Fisheries (LOF) for 2003 as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2003 reflects new information on interactions between commercial fisheries and marine mammals. Under the MMPA, NMFS must place each commercial fishery on the LOF into one of three categories based upon the level of serious injury and mortality of marine mammals that occurs incidental to that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: This final rule is effective August 14, 2003. However, compliance with the requirement to register with NMFS and to obtain an authorization certificate is not required until January 1, 2004 for fisheries added or elevated to Category II in this final rule. For fisheries affected by the delay, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Registration information, materials, and marine mammal reporting forms may be obtained from several regional offices. See **SUPPLEMENTARY INFORMATION** for addresses of the offices.

FOR FURTHER INFORMATION CONTACT: Tanya Dobrzynski, Office of Protected Resources, 301–713–2322; Kim Thounhurst, Northeast Region, 978–281–9138; Juan Levesque, Southeast Region, 727–570–5312; Cathy Campbell, Southwest Region, 562–980–4060; Brent Norberg, Northwest Region, 206–526–6733; Bridget Mansfield, Alaska Region, 907–586–7642. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: Information may be obtained at the following offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs.

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin.

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Don Peterson.

NMFS, Northwest Region, 7600 Sand Point Way NE., Seattle, WA 98115, Attn: Permits Office.

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802.

Compliance Date for Registration Under the MMPA

Compliance with the requirement to register with NMFS and to obtain an authorization certificate is not required until January 1, 2004, for fisheries elevated to Category II in this final rule. These fisheries are: Gulf of Mexico gillnet fishery; California yellowtail, barracuda, white seabass, tuna drift gillnet fishery; and both the Mid-Atlantic mixed species trap/pot fishery and the U.S. Mid-Atlantic and Southeast U.S. Atlantic black seabass trap/pot fishery, which will be combined with the Northeast trap/pot fishery in the newly-defined Atlantic mixed species trap/pot fishery for the 2003 LOF. The above mentioned fisheries are considered to be Category II fisheries on August 14, 2003, and are required to comply with all requirements of Category II fisheries (*i.e.*, complying with applicable take reduction plan requirements and carrying observers, if requested), other than the registration requirement, on that date.

What Is the List of Fisheries?

Under section 118 of the MMPA, NMFS must publish, at least annually, a LOF that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery (16 U.S.C. 1387(c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

How Does NMFS Determine in Which Category a Fishery Is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized in the response to comment 1 in the preamble below.

How Do I Find Out if a Specific Fishery Is in Category I, II, or III?

This final rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required To Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

Fishers must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see **ADDRESSES**) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a completed registration, NMFS will issue vessel or gear owners physical evidence of a current and valid registration that must be displayed or in the possession of the master of each vessel while fishing in accordance with section 118 of the MMPA (16 U.S.C. 1387(c)(3)(A)).

What Is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the $25 registration fee. Following is a list of integrated fisheries and a

summary of the integration process for each Region. Fishers who operate in an integrated fishery and have not received registration materials should contact their NMFS Regional Office listed in the first paragraph of **SUPPLEMENTARY INFORMATION.**

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

1. all Alaska Category II fisheries;
2. all Washington and Oregon Category II fisheries;
3. Northeast Regional fisheries for which a state or Federal permit is required. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Northeast Regional Office (see **ADDRESSES**); and
4. all North Carolina, South Carolina, Georgia, and Florida Category II fisheries for which a state permit is required.

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast Region, annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is the responsibility of the fisher to ensure that registration or renewal forms are completed and submitted to NMFS at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time should request a registration form from the appropriate Regional Office (see **ADDRESSES**).

Am I Required To Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the absence of any wound or other evidence of an injury, and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required To Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required To Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans.

Sources of Information Reviewed for the 2003 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs.

NMFS SARs provide the best available information on both the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the potential biological removal (PBR) levels for marine mammal stocks.

The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and the Caribbean. The SRGs were created by the MMPA to review the science that goes into the stock assessment reports and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The LOF for 2003 was based on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), and the draft (67 FR 19417, April 19, 2002) and final (68 FR 17920, April 14, 2003) SARs for 2002.

Comments and Responses

NMFS received 16 comment letters on the proposed 2003 LOF (68 FR 1414, January 10, 2003) from environmental, commercial fishing, and federal and state agency interests. Issues outside the scope of the LOF are not responded to in this final rule. In particular, there were several comments regarding the SARs that will be handled through future SAR reviews and revisions where appropriate as SAR revisions undergo separate public review and comment. Typographic errors noted by commenters were corrected where appropriate.

General Comments

Comment 1: Two commenters questioned the appropriateness of the current tier-based fishery classification system in terms of how it distinguishes Category I and II fisheries from Category III fisheries. Both commenters argued that whether a fishery exceeds PBR, and not the percentage of a stock's PBR incidentally killed or seriously injured in a fishery, should be the threshold NMFS uses to distinguish among different fishery classifications given that this is the standard established in the MMPA.

Response: NMFS disagrees that PBR should be the threshold used to separate fisheries that result in ''frequent'' and ''occasional'' incidental mortality and serious injury from fisheries that have ''a remote likelihood of or no known incidental mortality or serious injury of marine mammals.'' The rationale for this threshold was explained in the proposed rule (60 FR 31666, June 16, 1995) and final rule (60 FR 45086, August 30, 1995) for the management of unintentional taking of marine mammals incidental to commercial fishing operations under section 118 of the MMPA.

The current fishery classification system is based on a two-tiered, stock-specific approach that first addresses the total impacts of all fisheries on each marine mammal stock and then addresses the impacts of individual fisheries on each stock. Tier 1 considers the additive fishery mortality and serious injury for a particular stock, while Tier 2 considers fishery-specific mortality for a particular stock. This approach is based on the rate, in numbers of animals per year, of serious injuries and mortalities due to commercial fishing relative to a stock's PBR level. Under the Tier 1 analysis, if the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of such a stock, then all fisheries interacting with this stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier to determine their classification. Under the Tier 2 analysis, those fisheries in which annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the stock's PBR level are placed in Category I, while those fisheries in which annual mortality and serious injury is greater

than 1 percent and less than 50 percent of the stock's PBR level are placed in Category II. Individual fisheries in which annual mortality and serious injury is less than or equal to 1 percent of the PBR level would be placed in Category III. The threshold between Tier 1 and Tier 2 was set at 10 percent of the PBR level based on recommendations that arose from a PBR Workshop held in La Jolla, California in June 1994. The Workshop Report indicated that if the total annual incidental serious injury and mortality level for a particular stock did not exceed 10 percent of the PBR level, the amount of time necessary for that population to achieve the optimum sustainable population level would only increase by 10 percent. Thus, 10 percent of the PBR level for a particular stock was equated to ''biological insignificance.'' This approach ensures that fisheries are categorized based on their impacts on stocks and allows NMFS to focus resources on those fisheries that have more than a negligible impact on marine mammals.

Ultimately, this approach is based on the fact that the MMPA established both a short-term and a long-term goal with respect to take reduction plans for reducing marine mammal mortality and serious injury incidental to commercial fishing operations. MMPA section 118(f)(2) provides: ''The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the potential biological removal established for that stock under section 117. The long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans.'' NMFS established the tier-based fishery classification system with each goal in mind, and specifically, to ensure that fisheries progressively move toward the long-term goal of the MMPA.

Comment 2: One commenter requested that NMFS better describe the information used and the basis for estimating incidental mortality and serious injury of marine mammals, specifically for fisheries where the level of take is uncertain but considered significant.

Response: NMFS appreciates this comment and believes that it would be useful to provide a background document that better describes the types of information and methods used to estimate incidental mortality and serious injury of marine mammals and classify fisheries so that the public could better understand the rationale for each fishery classification. NMFS will consider the development of such a document in the future as time and resources permit. Generally, NMFS uses information on incidental mortality and serious injury provided in the annual SARs as the basis for fishery classifications. SARs contain a list of references that demonstrate the published information used and also describe how the data on incidental mortality and serious injury for a given stock were ascertained. NMFS refers the commenter to the SARs for marine mammal stocks in the U.S. Copies of the SARs are available on the NMFS Office of Protected Resource's Web site at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

Comment 3: One commenter recommended that NMFS distinguish between commercial and non-commercial (*e.g.*, recreational, subsistence, personal use) pot fisheries given that non-commercial fisheries may use practices and gear types that result in interactions with marine mammals.

Response: NMFS agrees that it is important to address all potential sources of fishery-related incidental mortality and serious injury of marine mammals. Furthermore, the agency understands that there are fisheries in which both commercial and non-commercial fisheries use the same gear and deploy it in the same manner and that both can result in incidental mortality and serious injury of marine mammals. While the MMPA does not currently provide NMFS with the authority to categorize or monitor non-commercial fisheries with respect to marine mammal interactions, NMFS is currently seeking this authority through the administration's proposal to reauthorize the MMPA. Nonetheless, where possible, NMFS has collected information on incidental mortality and serious injury of marine mammals resulting from non-commercial fisheries.

Comment 4: One commenter urged NMFS to ensure consistency in methods used from fishery to fishery to determine the true level of incidental mortality and/or serious injury of marine mammals.

Response: NMFS agrees with the commenter that applying its methods consistently in the determination of estimates of marine mammal mortality and serious injury incidental to fishing is essential. Through the workshops on Guidelines for Assessing Marine Mammal Stocks (GAMMS) held in 1994 and 1996 and the accompanying GAMMS reports, which are available on the NMFS Office of Protected Resources Web site at *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html,* NMFS has developed guidelines to ensure consistency in the methods used and analysis of information to determine rates of marine mammal incidental mortality and serious injury resulting from fishing.

Comments on Fisheries in the Pacific Ocean

Comments on the Alaska Bering Sea and Aleutian Islands (BSAI) Groundfish Longline/Setline Fishery

Comment 5: One commenter stated that NMFS should reclassify the Alaska BSAI groundfish longline/setline fishery as Category II given the level of killer whale takes in the fishery.

Response: According to the 2002 SARs, the BSAI groundfish longline/setline fishery incurred an average of 0.8 incidental mortalities/serious injuries of eastern North Pacific northern resident killer whales between 1995 and 1999, or 11 percent of the stock's PBR, which qualifies the fishery as Category II. However, the PBR for this stock is an underestimate because (1) the minimum abundance estimate is based on a count of known individuals rather than an estimate of population size and (2) the abundance estimate does not include resident animals identified during research cruises in the Gulf of Alaska and Bering Sea in 2001–2002. NMFS expects that the minimum population estimate will increase as a result of the recent research. Should the minimum population estimate increase slightly, the PBR level would also increase, and the estimated mortality level incidental to this fishery would not be sufficiently high to trigger its placement in Category II. Therefore, given that the PBR level is likely an underestimate and the incidental mortality and serious injury rate is so close to the threshold between Category II and Category III, NMFS will retain this fishery in Category III at this time.

Comments on the Hawaii (HI) Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, and Oceanic Sharks Longline/ Setline Fishery

Comment 6: One commenter stated that NMFS should reclassify the Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, and oceanic sharks longline/ setline fishery as Category I given that takes of false killer whales in the fishery exceed the marine mammal stock's PBR level. The commenter expressed concern that sea turtle regulations that went into effect have not helped reduce marine mammal takes. The commenter also expressed concern about the results of recent abundance surveys for false killer whales.

Response: In 2002, NMFS conducted an abundance survey to estimate abundance for marine mammals inhabiting waters off the Hawaiian islands, including areas in which the HI swordfish, tuna, billfish, mahi mahi, wahoo, and oceanic sharks longline/set line fishery operates. NMFS is currently analyzing the results of this survey and will include this information in the Draft Stock Assessment Reports (SARs) for 2004. NMFS will use the updated SARs to re-evaluate the classification of this fishery for the 2004 LOF.

Comments on the Alaska Crustacean Pot Fishery

Comment 7: One commenter stated that NMFS should divide the Alaska crustacean pot fishery into different components based on variation in geographic area, season, depth, gear type, and interaction with humpback whales to help NMFS determine which element of the fishery is having the greatest number of interactions with humpback whales.

Response: The LOF currently groups all Alaska pot fisheries into the ''Alaska crustacean pot fishery.'' However, this fishery does not exist as a single entity in terms of fishery operations or management. Rather, multiple crustacean fisheries target different species over distinct geographic areas and during separate seasons within the exclusive economic zone off Alaska and in state waters on an annual basis. These differences are recognized by NMFS, the North Pacific Fishery Management Council, and the State of Alaska, and are reflected in the numerous management specifications and restrictions captured in regulations promulgated under the Fishery Management Plan for the Bering Sea and Aleutian Islands King and Tanner Crabs and under Alaska state management plans for various crab and other crustacean fisheries, including shrimp, in state waters.

Additionally, Alaska crustacean fisheries are known to result in incidental mortality and serious injury of marine mammals in some areas (*e.g.*, Southeast Alaska), but not in others (*e.g.*, the Bering Sea). For purposes of future Lists of Fisheries, all crustacean fisheries in Alaska will be reviewed for correct delineations to accurately reflect existing fishery management regimes. Based on this review, NMFS will propose adjustments to this and other Alaska fisheries and will reevaluate data on marine mammal interactions in these fisheries accordingly for the 2004 LOF.

Comment 8: Two commenters felt that NMFS should reclassify the Alaska crustacean pot fishery as Category I or II based on its level of interactions with humpback whales. The commenters felt the inability to determine the specific fishery that entangled humpback whales should not make it impossible to classify the fishery as Category I or II and stated that design of the fishing gear should be sufficient.

Response: See response to Comment 7. The inability to determine the fishery in which the entanglements occurred does not prevent NMFS from classifying fisheries. NMFS regulations at 50 CFR 229.2 provide that the Assistant Administrator will, in the absence of reliable information, determine whether the incidental serious injury or mortality is ''occasional'' by evaluating other factors such as fishing techniques, gear used, seasons and areas fished, and the species and distribution of marine mammals in the area.

NMFS has not reclassified this fishery at this time because, in addition to more appropriately delineating the Alaska crustacean pot fishery and looking at marine mammal incidental mortality and serious injury rates within different sectors of the fishery, the agency is currently evaluating the stock structure of Central North Pacific humpback whales. We will take this comment into consideration as we further define stock structure of Central North Pacific humpback whales as well as consider separating and reclassifying portions of the Alaska crustacean pot fishery, if appropriate, for the 2004 LOF.

Comment 9: One commenter noted that the Central North Pacific stock of humpback whales should be added to the list of stocks that interact with the Alaska crustacean pot fishery given that NMFS mentioned in the text of the proposed rule that it is currently evaluating interactions between this stock and the fishery.

Response: NMFS will add the Central North Pacific stock of humpback whales to the list of stocks that interact with this fishery.

Comments on the BSAI Groundfish Trawl Fishery

Comment 10: NMFS received comments supporting and opposing reclassification of the BSAI groundfish trawl fishery from Category III to Category II. One commenter in favor of the reclassification stated that it is more appropriate to reclassify the fishery as Category I given uncertainty concerning the level of interactions occurring between the fishery and North Pacific humpback whales. One commenter opposed to reclassifying the fishery questioned the quality of the data on which NMFS based this decision as well as the appropriateness of double-counting humpback whales between the Western and Central North Pacific stocks. This commenter also requested that NMFS divide the fishery into smaller components given the sheer size and diversity of the fishery.

Response: Where there is considerable uncertainty regarding to which stock a serious injury or mortality should be assigned, NMFS exercises a conservative approach of assigning the serious injury or mortality to both stocks. Clearly, if information were available regarding the location of take, genetics of the animal taken, or other information that would conclusively link mortality to a specific stock, NMFS would use it to assign the take to a specific stock. In the meantime, the agency will review the serious injuries and mortalities incidental to this fishery to determine whether any of the takes of concern can be conclusively linked to a specific stock.

As with the Alaska crustacean pot fishery, this comment highlights the fact that a single BSAI groundfish trawl fishery, as currently listed in the annual LOF, does not exist as one homogenous fishery in terms of fishery operations or management, but rather, as a diverse group of fisheries that use different trawl gear types and target different groundfish species over distinct geographic areas and during different seasons within the Bering Sea on an annual basis. These fisheries are currently managed as separate entities. For instance, the BSAI groundfish trawl fisheries are managed by gear type (including pelagic and non-pelagic trawl gear), by target species (including pollock, Pacific cod, Atka mackerel, and various flatfish and rockfish complexes), and by geographic regions within the BSAI. These differences are recognized by NMFS and the North Pacific Fishery Management Council and are reflected in the numerous management

specifications and restrictions captured in regulations promulgated under the Fishery Management Plan for the Bering Sea and Aleutian Islands.

Additionally, sectors within these fisheries are recognized by statute (the American Fisheries Act) and regulatory management measures endorsed by the North Pacific Fishery Management Council and implemented by NMFS. Such sectors include the head and gut sector of each of the Pacific cod and Atka mackerel trawl fisheries, and the catcher/processor and inshore processor sectors, as well as their associated catcher vessel fleets. In some cases, these sectors also comprise legally defined co-operatives. Distinct management measures for these recognized fisheries include separate harvest restrictions by time and area based on target species, non-target groundfish bycatch, and prohibited species catch, as well as time and area closures based on marine mammal management measures. These distinct fisheries are further recognized in several Biological Opinions promulgated under Section 7 of the Endangered Species Act and in Environmental Impact Statements on the fisheries promulgated under the National Environmental Policy Act.

There is a likelihood that the incidental mortality and serious injury of marine mammals varies among BSAI groundfish trawl fisheries, based on gear type, time and area of operations, and target groundfish species. For this and all the above reasons, NMFS will not reclassify the fishery designated as the ''BSAI groundfish trawl fishery'' as Category II in the 2003 LOF. Rather, NMFS will propose fishery delineations within this fishery that accurately reflect the existing fishery management regimes for the BSAI groundfish trawl fisheries, and will analyze rates of marine mammal incidental mortality and serious injury within these new delineations accordingly, for the 2004 LOF.

A one year delay in this process will not adversely affect NMFS' ability to monitor marine mammal interactions with this fishery, because, although currently in Category III, these fisheries already carry a minimum of 30 percent observer coverage for vessels 60 ft. (18.3 m.) length overall (LOA) and over, and a vast majority of the participating vessels maintain 100–200 percent observer coverage by regulation for purposes of fisheries management.

Additionally, there are other Federal and state fisheries listed in the LOF that warrant similar review for similar reasons. Therefore, for purposes of the List of Fisheries, all Federal and state fisheries in Alaska will be reviewed for correct delineations to accurately reflect the existing fishery management regimes for the 2004 LOF.

Comment 11: One commenter stated that NMFS should reassess its methods to monitor the Alaska BSAI groundfish trawl fishery to ensure that observer coverage is appropriately distributed to monitor humpback whale takes.

Response: NMFS believes that the level and distribution of observer coverage in the BSAI groundfish trawl fishery is sufficient to monitor marine mammal interactions, including those involving humpback whales, and to identify issues of concern. Currently, there is a requirement for 100-percent observer coverage of vessels in this fishery that exceed 124 ft. (37.8 m.) LOA. In some cases, pursuant to the American Fisheries Act and Community Development Quota programs, 200-percent observer coverage is required on vessels that exceed this length. For vessels between 124 ft. (37.8 m.) and 60 ft. (18.3 m.) LOA, 30 percent observer coverage is required. Observers are not required on catcher vessels that deliver codends to catcher processors or motherships or on vessels less than 60 ft. (18.3 m.) LOA.

NMFS' Alaska Regional office is currently working with the North Pacific Fishery Management Council to review the issue of appropriate observer coverage in federal groundfish fisheries, as well as halibut fisheries. All vessel categories in these fisheries, including those not currently required to carry observers, will be reviewed over the next several years to assess appropriate observer coverage levels for a suite of management and scientific needs.

Comment 12: One commenter requested that NMFS clarify whether harbor seals or harbor porpoises should be removed from the list of species incidentally killed/seriously injured in the BSAI groundfish trawl fishery.

Response: NMFS clarifies that in the proposed rule for the 2003 List of Fisheries the agency proposed to remove Gulf of Alaska (GOA) harbor seals from the list of species interacting with the BSAI groundfish trawl fishery. Reevaluation of existing data on incidental mortality and serious injury, together with information on the BSAI groundfish trawl fishery, confirms that the range of the GOA harbor seal stock overlaps with the BSAI groundfish trawl fishery. Therefore, NMFS will retain this stock on the list of species interacting with the BSAI groundfish trawl fishery. The proposed deletion of the GOA harbor seal in this case was in error.

Comments on Alaska Cook Inlet Salmon Drift and Set Gillnet Fisheries

Comment 13: Some commenters stated that reclassifying the Alaska Cook Inlet salmon drift and set gillnet fisheries as Category III is premature given that a decrease in observed interactions is likely due to declining numbers of Cook Inlet beluga and that reclassification should be based on estimated takes, not observed takes. Commenters recommended the fisheries be kept in Category II with continued observer coverage.

Response: NMFS has determined that classification of the Alaska Cook Inlet salmon set gillnet fishery as a Category III fishery is appropriate based on the lack of any observed serious injuries or mortalities of marine mammals in that fishery after two consecutive years of observer coverage that occurred from 1999–2000. In contrast, analysis completed since the proposed rule was published indicates that one mortality of harbor porpoise in the Cook Inlet salmon drift gillnet fishery in 2000 extrapolates to a mortality estimate of 27 animals in 2000, or an average of 13.5 per year for 1999 and 2000. This level of incidental mortality and serious injury is adequate to retain the Cook Inlet salmon drift gillnet fishery in Category II. Therefore, NMFS will retain this fishery as Category II.

NMFS agrees that when classifying a fishery based on observer data, observed serious injuries and mortalities should be extrapolated to estimate the total level of incidental serious injury and mortality in that fishery. Observed levels of incidental mortality and serious injury were used previously only because the analysis for extrapolation had not yet been completed. The observed levels of serious injury and mortality indicated a Category II classification was appropriate, and the extrapolated estimate still supports this.

Comment 14: One commenter requested that NMFS clarify what it was proposing with respect to the AK Cook Inlet salmon drift gillnet fishery.

Response: NMFS clarifies that it initially proposed to reclassify the AK Cook Inlet salmon drift gillnet fishery as Category III. Upon further analysis of 2000 data, NMFS will retain this fishery as Category II in the 2003 LOF (see response to Comment 13 above).

Comments on the California (CA) Yellowtail, Barracuda, White Seabass, and Tuna Drift Gillnet Fishery

Comment 15: One commenter expressed support for the addition of the CA yellowtail, barracuda, white

seabass, and tuna drift gillnet fishery as a Category II fishery.

Response: NMFS agrees and has added the fishery to the LOF as a Category II fishery.

Comment 16: One commenter recommended that NMFS address this fishery under the Pacific Offshore Cetacean Take Reduction Plan (POCTRP).

Response: NMFS believes that it is premature at this point to include this fishery as part of the POCTRP because this fishery has little known interaction with marine mammals. In an effort to better assess this fishery's potential to entangle marine mammals and to determine the species of marine mammals, if any, that are incidentally killed or seriously injured in this fishery, NMFS began placing observers on a small number of vessels participating in this fishery beginning in summer 2002. NMFS will use the information collected through this observer program to re-evaluate the categorization of this fishery in the 2004 LOF and to reassess whether this fishery should be subject to the POCTRP.

Comments on the California/Oregon (OR) Thresher Shark/Swordfish Drift Gillnet Fishery (>14 in. mesh)

Comment 17: Several commenters supported reclassification of the CA/OR thresher shark/swordfish drift gillnet fishery from Category I to Category II.

Response: NMFS agrees and has reclassified the fishery from Category I to Category II.

Comment 18: One commenter stated that reclassification of the CA/OR thresher shark/swordfish drift gillnet fishery from Category I to II is premature given the level of sperm whale takes that occur in the fishery.

Response: NMFS does not believe that it is premature to reclassify the CA/OR thresher shark/swordfish drift gillnet fishery from Category I to Category II. This fishery fits the criteria that were developed for defining a Category II fishery. These fishery classification criteria, which were subject to review and comment in 1995, consist of a two-tiered, stock specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. Thus, a fishery that interacts with several marine mammal stocks can still be classified as a Category II fishery if the annual mortality and serious injury of each of these marine mammal stocks is greater than 1 percent but less than 50 percent of each stock's PBR level. This is the case for the CA/OR thresher shark/swordfish drift gillnet fishery, thus NMFS is reclassifying this fishery as a Category II fishery.

Comment 19: One commenter supported reclassification of this fishery from Category I to II, but urged NMFS to maintain observer coverage in the fishery given the history of marine mammal takes in the fishery, the uncertainty of the long-term efficacy of pingers, and the levels of sperm whale takes in the fishery.

Response: NMFS will maintain observer coverage in this fishery to continue to monitor the effectiveness of the POCTRP and to ensure the appropriate categorization of the fishery.

Comments on Fisheries in the Atlantic Ocean, Caribbean, or Gulf of Mexico

Comments on the Mid-Atlantic Coastal Gillnet Fishery

Comment 20: One commenter noted that reclassification of the Mid-Atlantic coastal gillnet fishery as a Category I fishery is appropriate based on the level of incidental mortality and serious injury of Western North Atlantic coastal bottlenose dolphins in this fishery.

Response: NMFS agrees and has reclassified the fishery as Category I as proposed.

Comments on the Gulf of Mexico Gillnet Fishery

Comment 21: One commenter supported reclassification of the Gulf of Mexico gillnet fishery as Category II but said that, based on documented interactions with bottlenose dolphin stocks, the complexity of the stocks themselves, and the current scant level of monitoring in this fishery, a Category I classification would be more appropriate for this fishery.

Response: NMFS believes that data uncertainties regarding marine mammal interactions in this fishery and bottlenose dolphin stock structure, as well as the declining level of gillnet fishing activity in the Gulf of Mexico, support a Category II classification. If new information indicates that take rates relative to population status are higher than currently estimated such that a Category I classification is warranted, NMFS would propose such a reclassification in the future.

Comment 22: One commenter stated that NMFS should separate the Gulf of Mexico king and Spanish mackerel gillnet fisheries from the rest of the Gulf of Mexico gillnet fisheries and retain mackerel gillnet fisheries in Category III because of the lack of evidence of bottlenose dolphin takes in this portion of the fishery.

Response: Because NMFS relies primarily on strandings data for information about incidental marine mammal mortality and serious injury in the Gulf of Mexico, it is often difficult to attribute stranded marine mammals that show clear signs of gear interaction to a specific portion of a fishery. Nonetheless, NMFS' observer data from the Mid-Atlantic and South Atlantic show that mackerel gillnet fisheries have resulted in entanglement of bottlenose dolphins. In addition, the Atlantic SRG recommended that NMFS use its discretion under 50 CFR 229.2, which enables the Assistant Administrator to evaluate factors including, but not limited to fishing techniques and gear used, to classify all gillnet fisheries as at least Category II given that observer data clearly show incidental mortality and serious injury of marine mammals where gillnet fisheries occur.

Comments on the Gulf of Mexico Menhaden Purse Seine Fishery

Comment 23: One commenter stated that the Gulf of Mexico menhaden purse seine fishery should be listed as Category I based on information in the 1999 SAR, which indicates that fishery-related mortality and serious injury from this fishery exceeds PBR for the Gulf of Mexico bay, sound, and estuarine stocks of bottlenose dolphins. The commenter recommended that NMFS institute an observer program to obtain better information on this fishery.

Response: With regard to reclassifying this fishery as Category I, NMFS responded to this request in the 1999 LOF (see Comment/Response 14 in 64 FR 9067, February 24, 1999), and the same rationale applies. In summary, because of the lack of certainty regarding stock structure of the Gulf of Mexico bay, sound and estuarine bottlenose dolphins and the lack of observer coverage to accurately estimate fishery-related mortalities in this fishery, NMFS is retaining this fishery as Category II at this time. NMFS is currently investigating stock structure of Gulf of Mexico bottlenose dolphins in order to better define these stocks in the future.

Also, as stated when this fishery was originally elevated to Category II status, this fishery coincides principally with the coastal stocks of bottlenose dolphins in the Gulf of Mexico. The original change in classification was based on PBR for Gulf of Mexico coastal stocks. NMFS agrees that more current observer data are necessary.

Comments on the Atlantic Mixed Species Trap/Pot Fishery

Comment 24: One commenter supported inclusion of various Category

III trap/pot fisheries into a new generic trap/pot listing in Category II.

Response: NMFS agrees and the generic Category II ''Atlantic mixed species trap/pot'' fishery has been established.

Comment 25: One commenter stated that the newly-defined Atlantic mixed species trap/pot fishery should be addressed under the Atlantic Large Whale Take Reduction Plan (ALWTRP) and Harbor Porpoise Take Reduction Plan (HPTRP).

Response: NMFS added representatives of this fishery complex to the Atlantic Large Whale Take Reduction Team (ALWTRT) and raised this issue at the ALWTRT's meeting in April 2003. NMFS will be working with the ALWTRT to incorporate measures to address this fishery in the ALWTRP. With regard to the HPTRP, NMFS is not aware of any harbor porpoise interactions with trap/pot gear in recent years. The harbor porpoise (Gulf of Maine/Bay of Fundy stock) was listed as interacting with the fish trap/pot fisheries in the Northeast in the original LOF in 1989. However, NMFS is reevaluating that information during a review of older entanglement data and plans to update the list of interacting stocks in a future LOF based on a review of all available data. Based on data currently available, it is not appropriate to address trap/pot fisheries under the HPTRP at this time, although gillnet fisheries used to obtain bait for these fisheries may already be regulated under the HPTRP.

Comment 26: One commenter stated that NMFS provided no scientific justification for classifying the Atlantic mixed species trap/pot fishery as Category II other than ''by analogy.'' The commenter objected to the imposition of registration costs that this classification would have on fishermen.

Response: Classification by analogy refers to the exercise of administrative discretion using relevant information such as fishing techniques, gears used, and stranding data, as described in the definition of a Category II fishery included in the final rule for the Section 118 implementing regulations (60 FR 45086, August 30, 1995, codified at 50 CFR 229.2) to determine whether a fishery results in ''occasional'' incidental mortality and serious injury of marine mammals.

The generic Northeast trap/pot fishery is already a Category II fishery pursuant to the 2001 LOF. For the 2003 LOF, NMFS has combined the generic Category III trap/pot fisheries in the Mid-Atlantic and Southeast with the generic Category II Northeast trap/pot fishery and redefined the fishery as the Atlantic mixed species trap/pot fishery. The new Atlantic mixed species trap/pot fishery is appropriately classified as Category II based on known entanglement of cetaceans and pinnipeds in this gear type. The presence of trap/pot gear in areas and at times when these marine mammals are present is likely to result in occasional incidental mortality or serious injury of marine mammals.

Since implementation of the 2002 LOF, NMFS automatically registers all Atlantic fishers with current state or federal fishing permits for fisheries designated as Category I or II and has waived the registration fee for the Marine Mammal Authorization Permit. Therefore, there will be no economic burden associated with registration under the MMPA.

Comment 27: One commenter concurred with classifying Atlantic pot fisheries at least at the Category II level given that they include gears already known to incidentally take marine mammals. However, the commenter thought that Category I would be a more appropriate classification and said a lower Category is not warranted simply because the operation of Southeast trap/pot fisheries does not overlap with right whale distribution. The commenter said these fisheries entangle other species such as bottlenose dolphins and other small cetaceans and noted that this information was not provided in the LOF when justifying categorization of the fishery.

Response: Although the definition of a Category II fishery in 50 CFR 229.2 provides that NMFS may use a number of factors in determining whether incidental serious injury or mortality is ''occasional,'' the definition of a Category I fishery does not provide the same level of flexibility for administrative discretion in determining what is ''frequent.'' If new information becomes available suggesting that takes in the Atlantic mixed species trap/pot fishery results in a rate of incidental mortality or serious injury of 50 percent or greater of the PBR for a marine mammal stock, then it would be appropriate to consider elevation of those fisheries to Category I.

Data indicate that interactions between bottlenose dolphins and the spiny lobster and stone crab trap/pot fisheries in the Atlantic, Caribbean and Gulf of Mexico are rare. Additionally, NMFS has no data regarding interactions between bottlenose dolphins and other trap/pot fisheries in the Southeast or Mid-Atlantic. NMFS will continue to define and evaluate other trap/pot fisheries in the Atlantic, Caribbean, and Gulf of Mexico and consider whether to reclassify them based on incidental mortality and serious injury of marine mammals in the 2004 LOF.

Comments on the Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Longline Fishery

Comment 28: One commenter stated that NMFS should update the lists of species incidentally killed or seriously injured in the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery based on data presented in the 2002 Stock Assessment Reports. The commenter specifically identified species that NMFS should review.

Response: Unlike the SARs, which focus on the most recent 5 years of data, the list of marine mammals incidentally killed or seriously injured in a given fishery in the LOF often includes all species or stocks known to experience mortality or serious injury in a given fishery and may also include species for which there are anecdotal or historical, but not necessarily current, records of interaction based on a variety of data types (*e.g.*, logbooks, strandings data, observer data). This helps the agency better understand the nature and types of interactions that occur in each fishery. NMFS plans to evaluate how best to present historical versus current data on marine mammal-fishery interactions in future Lists of Fisheries and will make any necessary changes in the LOF tables once that evaluation is complete.

Comment 29: One commenter suggested that NMFS subdivide the pelagic longline fishery into three regional fisheries in the LOF to reflect variations in geographic region, target species, vessel size, area-specific regulations, and time of year. The commenter noted specifically that the Atlantic portion of the longline fishery should be divided into northern and southern components with a boundary line at Cape Hatteras, North Carolina.

Response: NMFS appreciates the information provided by the commenter on potential subdivisions of the pelagic longline fishery and notes that we addressed similar comments in the final LOF for 1997 (see Comment/Response 37 in 62 FR 33, January 2, 1997), the final LOF for 1999 (see Comment/Response 18 in 64 FR 9067, February 24, 1999), and the final LOF for 2001 (see Comment/Response 16 in 66 FR 42784, August 15, 2001). At this time, however, NMFS is not aware of any information to suggest that there is differential marine mammal incidental mortality/serious injury in the pelagic longline fishery along geographic lines. Therefore, subdivision of this fishery as

the commenter suggests is not appropriate at this time. While subdivision of this fishery along ecosystem lines similar to that done for inshore fisheries may be considered in the future, the analysis to support such a division is not currently available.

NMFS will, whenever possible, define fisheries the way they are defined in federal, regional, or state fishery management programs. This will (1) help NMFS fulfill its statutory obligations by coordinating registration under the MMPA with existing fishery management programs, (2) provide a ''common name'' for a fishery that can be used by NMFS, fishers, and state and regional fishery managers, and (3) allow NMFS to more easily collect information on fishery statistics, such as the number of participants, target species, length of fishing season, etc.

Comment 30: One commenter requested that NMFS add the Western North Atlantic (WNA) pygmy sperm whale to the list of marine mammals incidentally killed or seriously injured in the pelagic longline fishery based on the report of a serious injury of a pygmy sperm whale in this fishery in 2000.

Response: NMFS agrees and will add the WNA pygmy sperm whale to the list of marine mammals incidentally taken in this fishery.

Comments on the Gulf of Mexico Blue Crab Trap/pot Fishery

Comment 31: One commenter stated that NMFS should reclassify the Gulf of Mexico blue crab trap/pot fishery at least as Category II and expressed concern that the agency did not provide adequate justification for not reclassifying the fishery.

Response: NMFS has decided not to reclassify this fishery in the 2003 LOF because the bottlenose dolphin stock structure in the Gulf of Mexico is not well defined at this time. Additionally, the available data on strandings with signs of crab trap/pot interaction are relatively few in number. Therefore, NMFS believes it is more appropriate to reevaluate this fishery relative to PBRs for bay, sound, and estuarine stocks of bottlenose dolphins when the Gulf of Mexico bottlenose dolphin stock structure is better understood. NMFS is currently investigating the stock structure of bottlenose dolphins in the Gulf of Mexico to better define these stocks in the future.

In the coming year, NMFS will work with the Gulf States Marine Fisheries Commission (GSMFC) and the Sea Grant program to better monitor bottlenose dolphin takes in this fishery, to educate blue crab fishermen about marine mammal interaction issues and ways to reduce takes in the fishery, and to continue work on the derelict trap/pot removal program, believed to be an important source of marine mammal mortality and serious injury in the fishery. The NMFS Southeast Regional Office will monitor the progress in this fishery closely and reevaluate it for reclassification in the future.

Comment 32: Some commenters objected to future consideration of the Gulf of Mexico blue crab trap/pot fishery as Category II given the lack of solid data to support the fishery's reclassification. The commenters expressed particular concern about the lack of scientific rigor of the strandings data used in this analysis.

Response: See Comment/Response 31 above. NMFS has decided not to reclassify this fishery at this time and instead will work with the GSMFC and Sea Grant program to educate crabbers about ways to reduce interactions with marine mammals in this fishery.

NMFS believes that strandings data are an important source of information on marine mammal mortality and serious injury in the Gulf of Mexico blue crab trap/pot fishery and has developed a proposal to strengthen strandings programs throughout the Southeast region, including the Gulf of Mexico, to improve data quality in the coming years. NMFS'' proposal includes recommendations aimed at ensuring adequate geographic coverage of strandings programs, improving accuracy of strandings data, increasing reporting frequency and response time, facilitating communication between strandings responders and individuals reporting marine mammal takes, ensuring a centralized repository, involving fishermen in gear interaction determinations, and providing guidance to enforcement agents about their role in stranding response. NMFS will reevaluate this fishery in the 2004 LOF.

Summary of Changes to the LOF for 2003

With the following exceptions, the placement and definitions of U.S. commercial fisheries are identical to those provided in the LOF for 2002. The following summarizes changes in fishery classification, fishery name, fisheries listed on the LOF, number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery, that are revised in the 2003 LOF.

Commercial Fisheries in the Pacific Ocean

Fishery Classification

The ''California/Oregon Thresher Shark/Swordfish Drift Gillnet Fishery (≥ 14 in. mesh)'' is moved from Category I to Category II.

The ''AK Cook Inlet Salmon Set Gillnet Fishery'' is moved from Category II to Category III.

Addition of Fisheries to the LOF

The ''CA Yellowtail, Barracuda, White Seabass, and Tuna Drift Gillnet Fishery (mesh size > 3.5 inches and < 14 inches)'' is added to the LOF as a Category II fishery.

Removals of Fisheries from the LOF

The ''CA Shark/Bonito Longline/Set Line Fishery'' is removed from the LOF.

Fishery Name and Organizational Changes and Clarifications

The ''CA Angel Shark/Halibut and Other Species Large Mesh (>3.5 in. mesh) Set Gillnet Fishery'' is renamed the ''CA Angel Shark/Halibut and Other Species Set Gillnet Fishery (>3.5 in. mesh).''

The ''CA Longline Fishery'' is renamed the ''CA Pelagic Longline Fishery.''

The ''CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery'' is renamed the ''CA/OR thresher shark/swordfish drift gillnet fishery (≥14 in. mesh).''

Number of Vessels/Persons

The estimated number of participants in the ''AK Bering Sea Aleutian Islands Groundfish Longline/Set Line Fishery'' is updated to 148.

The estimated number of participants in the ''AK Gulf of Alaska Groundfish Longline/Set Line Fishery'is updated to 1030.

The estimated number of participants in the ''AK Bering Sea Aleutian Islands Groundfish Trawl Fishery'' is updated to 157.

The estimated number of participants in the ''AK Gulf of Alaska Groundfish Trawl Fishery'' is updated to 145.

The estimated number of participants in the ''AK Bering Sea, Gulf of Alaska Finfish Pot Fishery'' is updated to 314.

The estimated number of participants in the ''CA Pelagic Longline Fishery'' is updated to 30.

The estimated number of participants in the ''CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery (≥14 in. mesh)'' is updated to 113.

The estimated number of participants in the ''WA Puget Sound Region Salmon Drift Gillnet Fishery'' is updated to 225.

List of Species That Are Incidentally Injured or Killed by a Particular Fishery

The Northeast Pacific stock of fin whales is added to the list of marine mammal species and stocks incidentally injured or killed in the ''AK Bering Sea and Aleutian Islands groundfish trawl fishery'' because this stock is known to interact with this fishery and was inadvertently omitted from the list of marine mammal species in the past.

The Central North Pacific stock of humpback whales is added to the list of marine mammal species and stocks incidentally injured or killed in the ''Alaska crustacean pot fishery'' because of evidence that this stock has interacted with components of this fishery.

The CA coastal stock of bottlenose dolphins is removed from the list of marine mammal species and stocks incidentally injured or killed in the ''CA herring purse seine fishery.''

The CA/OR/WA stock of fin whales and the eastern North Pacific stock of gray whales are both added to the list of marine mammal species and stocks incidentally injured or killed in the ''CA/OR thresher shark/swordfish drift gillnet fishery (≥14 in. mesh).''

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Classification

The ''Gulf of Mexico Gillnet Fishery'' is moved from Category III to Category II.

The ''Mid-Atlantic Coastal Gillnet Fishery'' is moved from Category II to Category I.

The ''Mid-Atlantic Mixed Species Trap/Pot Fishery'' and the ''U.S. Mid-Atlantic and Southeast U.S. Atlantic Black Seabass Trap/Pot Fishery,'' formerly Category III fisheries, are combined with the ''Northeast Trap/Pot Fishery,'' currently Category II, and any other trap/pot fishery gear in the Atlantic that is not included in other trap/pot fisheries specifically identified in the LOF, into the ''Atlantic Mixed Species Trap/Pot Fishery.'' This newly-defined fishery is classified as Category II.

Addition of Fisheries to the LOF

See discussion of the ''Atlantic Mixed Species Trap/Pot Fishery'' above.

Fishery Name and Organizational Changes and Clarifications

The ''Southeastern U.S. Atlantic, Gulf of Mexico, U.S. Mid-Atlantic Pelagic Hook-and-Line/Harpoon Fishery'' is renamed the ''Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean Pelagic Hook-and-Line/Harpoon Fishery.''

Number of Vessels/Persons

The estimated number of participants in the ''Southeastern U.S. Atlantic Shark Gillnet Fishery'' is updated to 6.

The estimated number of participants in the ''U.S. Atlantic Tuna Purse Seine Fishery'' is updated to 5.

The estimated number of participants in the ''Southeastern U.S. Atlantic, Gulf of Mexico Shark Bottom Longline/Hook-and-Line Fishery'' is updated to <125.

List of Species That Are Incidentally Injured or Killed by a Particular Fishery

The Western North Atlantic pygmy sperm whale is added to the list of marine mammal species and stocks incidentally injured or killed in the ''Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Longline Fishery'' given the report of a serious injury of this stock in this fishery.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the 1996 LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience injury or mortality in a given fishery, but also includes species or stocks for which there are anecdotal or historical, but not necessarily current, records of interaction. Additionally, species identified by logbook entries may not be verified. Not all species or stocks identified are the reason for a fishery's placement in a given category. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of ''Category II fishery'' in 50 CFR 229.2.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

TABLE 1.—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated number of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES: CA angel shark/halibut and other species set gillnet (>3.5 in mesh)	58	Harbor porpoise, central CA. Common dolphin, short-beaked, CA/OR/WA. Common dolphin, long-beaked CA. California sea lion, U.S. Harbor seal, CA. Northern elephant seal, CA breeding. Sea otter, CA.
Category II		
GILLNET FISHERIES:		

TABLE 1.—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK Bristol Bay salmon drift gillnet	1,903	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific. Harbor seal, Bering Sea. Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Spotted seal, AK. Pacific white-sided dolphin, North Pacific.
AK Bristol Bay salmon set gillnet	1,014	Harbor seal, Bering Sea. Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Northern fur seal, Eastern Pacific. Spotted seal, AK.
AK Cook Inlet salmon drift gillnet	576	Steller sea lion, Western U.S. Harbor seal, GOA. Harbor porpoise, GOA. Dall's porpoise, AK. Beluga whale, Cook Inlet.
AK Kodiak salmon set gillnet	188	Harbor seal, GOA. Harbor porpoise, GOA. Sea otter, AK.
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented.
AK Peninsula/Aleutian Islands salmon drfit gillnet	164	Northern fur seal, Eastern Pacific. Harbor seal, GOA. Harbor porpoise, GOA. Dall's porpoise, AK.
AK Peninsula/Aleutian Islands salmon set gillnet	116	Steller sea lion, Western U.S. Harbor porpoise, Bering Sea.
AK Prince William Sound salmon drift gillnet	541	Steller sea lion, Western U.S. Northern fur seal, Eastern gillnet Pacific. Harbor seal, GOA. Pacific white-sided dolphin, North Pacific. Harbor porpoise, GOA. Dall's porpoise, AK. Sea Otter, AK.
AK Southeast salmon drift gillnet	481	Steller sea lion, Eastern U.S. Harbor seal, Southeast AK. Pacific white-sided dolphin, North Pacific. Harbor porpoise, Southeast AK. Dall's porpoise, AK. Humpback whale, central North Pacific.
AK Yakutat salmon set gillnet	170	Harbor seal, Southeast AK. Gray whale, Eastern North Pacific.
CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh)	113	Steller sea lion, Eastern U.S. Sperm whale, CA/OR/WA. Dall's porpoise, CA/OR/WA. Fin whale, CA/OR/WA. Gray whale, eastern North Pacific. Northern Pacific white-sided dolphin, CA/OR/WA. Southern Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Bottlenose dolphin, CA/OR/WA offshore. Short-beaked common dolphin, CA/OR/WA. Long-beaked common dolphin, CA/OR/WA. Northern right-whale dolphin, CA/OR/WA. Short-finned pilot whale, CA/OR/WA. Baird's beaked whale, CA/OR/WA. Mesoplodont beaked whale, CA/OR/WA. Cuvier's beaked whale, CA/OR/WA. Pygmy sperm whale, CA/OR/WA. California sea lion, U.S. Northern elephant seal, CA breeding. Humpback whale, CA/OR/WA-Mexico. Minke whale, CA/OR/WA. Striped dolphin, CA/OR/WA. Killer whale, CA/OR/WA Pacific coast. Northern fur seal, San Miguel Island.
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches).	24	None documented.

TABLE 1.—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded).	225	Harbor porpoise, WA. Dall's porpoise, CA/OR/WA. Harbor seal, WA inland.
PURSE SEINE FISHERIES		
AK Southeast salmon purse seine	416	Humpback whale, central North Pacific.
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Harbor seal, CA.
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA.
TRAWL FISHERIES AK miscellaneous finfish pair trawl	2	None documented.
LONGLINE FISHERIES		
CA pelagic longline	30	California sea lion.
OR swordfish floating longline	2	None documented.
OR blue shark floating longline	1	None documented.
Category III		
GILLNET FISHERIES:		
AK Cook Inlet salmon set gillnet	745	Steller sea lion, Western U.S. Harbor seal, GOA. Harbor porpoise, GOA. Dall's porpoise, AK. Beluga whale, Cook Inlet.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,922	Harbor porpoise, Bering Sea.
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Steller sea lion, Western U.S. Harbor seal, GOA.
AK roe herring and food/bait herring gillnet	2,034	None documented.
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented.
Hawaii gillnet	115	Bottlenose dolphin, HI. Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast.
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented.
WA, OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S. Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast. Northern elephant seal, CA breeding.
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented.
AK miscellaneous finfish beach seine	1	None documented.
AK miscellaneous finfish purse seine	3	None documented.
AK octopus/squid purse seine	2	None documented.
AK roe herring and food/bait herring beach seine	8	None documented.
AK roe herring and food/bait herring purse seine	624	None documented.
AK salmon beach seine	34	None documented.
AK salmon purse seine (except Southeast Alaska, which is in Category II).	953	Harbor seal, GOA.
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA.
CA sardine purse seine	120	None documented.
HI opelu/akule net	16	None documented.
HI purse seine	18	None documented.
HI throw net, cast net	47	None documented.
WA (all species) beach seine or drag seine	235	None documented.
WA, OR herring, smelt, squid purse seine or lampara	130	None documented.
WA salmon purse seine	440	None documented.
WA salmon reef net	53	None documented.
DIP NET FISHERIES:		
CA squid dip net	115	None documented.
WA, OR smelt, herring dip net	119	None documented.
MARINE AQUACULTURE FISHERIES:		
CA salmon enhancement rearing pen	>1	None documented.
OR salmon ranch	1	None documented.

TABLE 1.—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
WA, OR salmon net pens.	14	California sea lion, U.S. Harbor seal, WA inland waters.
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,530 (330 AK)	None documented.
AK salmon troll	2,335	Steller sea lion, Western U.S. Steller sea lion, Eastern U.S.
American Samoa tuna troll	<50	None documented.
CA/OR/WA salmon troll	4,300	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented.
Guam tuna troll	50	None documented.
HI net unclassified	106	None documented.
HI trolling, rod and reel	1,795	None documented.
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	148	Northern elephant seal, CA breeding. Killer whale, Eastern North Pacific resident. Killer whale, transient. Steller sea lion, Western U.S. Pacific white-sided dolphin, North Pacific. Dall's porpoise, AK. Harbor seal, Bering Sea.
AK Gulf of Alaska groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	1,030	Steller sea lion, Western U.S. Harbor seal, Southeast AK. Northern elephant seal, CA breeding.
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented.
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish).	731	None documented.
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Humpback whale, Central North Pacific. False killer whales, HI. Risso's dolphin, HI. Bottlenose dolphin, HI. Spinner dolphin, HI. Short-finned pilot whale, HI. Sperm whale, HI.
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented.
WA, OR North Pacific halibut longline/set line	350	None documented.
TRAWL FISHERIES:		
AK Bering Sea and Aleutian Islands Groundfish Trawl	157	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific. Killer whale, Eastern North Pacific resident. Killer whale, Eastern North Pacific transient. Pacific white-sided dolphin, North Pacific. Harbor porpoise, Bering Sea . Harbor seal, Bering Sea. Harbor seal, Gulf of Alaska. Bearded seal, AK. Ringed seal, AK. Spotted seal, AK. Dall's porpoise, AK. Ribbon seal, AK. Northern elephant seal, CA breeding. Sea otter, AK. Pacific walrus, AK. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific. Fin whale, Northeast Pacific.
AK food/bait herring trawl	3	None documented.
AK Gulf of Alaska groundfish trawl	145	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific. Harbor seal, GOA. Dall's porpoise, AK. Northern elephant seal, CA breeding. Fin whale, Northeast Pacific.
AK miscellaneous finfish otter or beam trawl	6	None documented.
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet).	58	None documented.

TABLE 1.—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	2	None documented.
WA, OR, CA groundfish trawl	585	Steller sea lion, Western U.S. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, central North Pacific. Dall's porpoise, CA/OR/WA. California sea lion, U.S. Harbor seal, OR/WA coast.
WA, OR, CA shrimp trawl	300	None documented.
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea, Gulf of Alaska finfish pot	314	Harbor seal, GOA. Harbor seal, Bering Sea. Sea otter, AK.
AK crustacean pot	1,852	Harbor porpoise, Southeast AK. Humpback whale, Central North Pacific.
AK octopus/squid pot	72	None documented.
AK snail pot	2	None documented.
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA.
OR, CA hagfish pot or trap	25	None documented.
WA, OR, CA crab pot	1,478	None documented.
WA, OR, CA sablefish pot	176	None documented.
WA, OR shrimp pot & trap	254	None documented.
HI crab trap	22	None documented.
HI fish trap	19	None documented.
HI lobster trap	15	Hawaiian monk seal.
HI shrimp trap	5	None documented.
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented.
AK North Pacific halibut handline and mechanical jig	93	None documented.
AK octopus/squid handline	2	None documented.
American Samoa bottomfish	<50	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented.
Guam bottomfish	<50	None documented.
HI aku boat, pole and line	54	None documented.
HI deep sea bottomfish	434	Hawaiian monk seal.
HI inshore handline	650	Bottlenose dolphin, HI.
HI tuna	144	Rough-toothed dolphin, HI. Bottlenose dolphin, HI. Hawaiian monk seal.
WA groundfish, bottomfish jig	679	None documented.
HARPOON FISHERIES: CA swordfish harpoon	228	None documented.
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented.
AK Southeast herring roe/food/bait pound net	3	None documented.
WA herring brush weir	1	None documented.
BAIT PENS: WA/OR/CA bait pens	13	None documented.
DREDGE FISHERIES: Coastwide scallop dredge	108 (12 AK)	None documented.
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	1	None documented.
AK clam	156	None documented.
WA herring spawn on kelp	4	None documented.
AK dungeness crab	3	None documented.
AK herring spawn on kelp	363	None documented.
AK urchin and other fish/shellfish	471	None documented.
CA abalone	111	None documented.
CA sea urchin	583	None documented.
HI coral diving	2	None documented.
HI fish pond	10	None documented.
HI handpick	135	None documented.
HI lobster diving	6	None documented.
HI squiding, spear	267	None documented.
WA, CA kelp	4	None documented.
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented.
WA shellfish aquaculture	684	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		

TABLE 1.—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented.
HI ''other''	114	None documented.
LIVE FINFISH/SHELLFISH FISHERIES: CA finfish and shellfish live trap/hook-and-line.	93	None documented.

List of Abbreviations Used in Table 1: AK—Alaska; CA—California; GOA—Gulf of Alaska; HI—Hawaii; OR—Oregon; WA—Washington.

TABLE 2.—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		
Mid-Atlantic coastal	>655	Humpback whale, Gulf of gillnet Maine. Minke whale, Canadian east coast. Bottlenose dolphin, WNA offshore. Bottlenose dolphin, WNA coastal. Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Long-finned pilot whale, WNA. Short-finned pilot whale, WNA. White-sided dolphin, WNA. Common dolphin, WNA.
Northeast sink gillnet	341	North Atlantic right whale, WNA. Humpback whale, WNA. Minke whale, Canadian east coast. Killer whale, WNA. White-sided dolphin, WNA. Bottlenose dolphin, WNA offshore. Harbor porpoise, GME/BF. Harbor seal, WNA. Gray seal, WNA. Common dolphin, WNA. Fin whale, WNA. Spotted dolphin, WNA. False killer whale, WNA. Harp seal, WNA.
LONGLINE FISHERIES: Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.	<200	Humpback whale, WNA. Minke whale, Canadian east coast. Risso's dolphin, WNA. Long-finned pilot whale, WNA. Short-finned pilot whale, WNA. Common dolphin, WNA. Atlantic spotted dolphin, WNA. Pantropical spotted dolphin, WNA. Striped dolphin, WNA. Bottlenose dolphin, WNA offshore. Bottlenose dolphin, GMX Outer Continental Shelf. Bottlenose dolphin, GMX Continental Shelf Edge and Slope. Atlantic spotted dolphin, Northern GMX. Pantropical spotted dolphin, Northern GMX. Risso's dolphin, Northern GMX. Harbor porpoise, GME/BF. Pygmy sperm whale, WNA.
TRAP/POT FISHERIES: Northeast/Mid-Atlantic American lobster trap/pot.	13,000	North Atlantic right whale, WNA. Humpback whale, WNA. Fin whale, WNA. Minke whale, Canadian east coast. Harbor seal, WNA.
TRAWL FISHERIES:		

TABLE 2.—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA. Risso's dolphin, WNA. Long-finned pilot whale, WNA. Short-finned pilot whale, WNA. White-sided dolphin, WNA.
Category II		
GILLNET FISHERIES:		
Gulf of Mexico gillnet	724	Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX Bay, Sound, and Estuarine.
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal.
Northeast anchored float gillnet	133	Humpback whale, WNA. White-sided dolphin, WNA. Harbor seal, WNA.
Northeast drift gillnet	([1])	None documented.
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal.
Southeastern U.S. Atlantic shark gillnet	6	Bottlenose dolphin, WNA coastal. North Atlantic right whale, WNA. Atlantic spotted dolphin, WNA.
TRAWL FISHERIES:		
Atlantic herring midwater trawl (including pair trawl)	17	Harbor seal, WNA.
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal. West Indian manatee, FL.
Atlantic mixed species trap/pot	([1])	Fin whale, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. Harbor porpoise, GM/BF.
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal.
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal. Harbor porpoise, GME/BF.
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal.
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal.
POUND NET FISHERIES: Virginia pound net	187	Bottlenose dolphin, WNA coastal.
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA. West Indian manatee, Antillean.
Chesapeake Bay inshore gillnet	45	Harbor porpoise, GME/BF.
Delaware Bay inshore gillnet	60	Humpback whale, WNA. Bottlenose dolphin, WNA coastal. Harbor porpoise, GME/BF.
Long Island Sound inshore gillnet	20	Humpback whale, WNA. Bottlenose dolphin, WNA coastal. Harbor porpoise, GME/BF.
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA. Bottlenose dolphin, WNA. Harbor porpoise, GME/BF.
TRAWL FISHERIES:		
Calico scallops trawl	12	None documented.
Crab trawl	400	None documented.
Georgia, South Carolina, Maryland whelk trawl	25	None documented.
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented.
Gulf of Maine northern shrimp trawl	320	None documented.
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX. Pantropical spotted dolphin, Eastern GMX.
Gulf of Mexico mixed species trawl	20	None documented.
Mid-Atlantic mixed species trawl	>1,000	None documented.

TABLE 2.—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA. Short-finned pilot whale, WNA. Common dolphin, WNA. White-sided dolphin, WNA. Striped dolphin, WNA. Bottlenose dolphin, WNA offshore.
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal.
U.S. Atlantic monkfish trawl	(1)	Common dolphin, WNA.
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	(1)	None documented.
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF Harbor seal, WNA. Gray seal, WNA.
Gulf of Maine menhaden purse seine	50	None documented.
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal.
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal. Humpback whale, WNA.
U.S. Atlantic tuna purse seine	5	None documented.
U.S. Mid-Atlantic hand seine	>250	None documented.
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine tub trawl groundfish bottom longline/hook-and-line.	46	Harbor seal, WNA. Gray seal, Northwest North Atlantic. Humpback whale, WNA.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	26,223	Humpback whale, WNA.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper- grouper and other reef fish bottom longline/hook-and-line.	>5,000	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	<125	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	1,446	None documented.
TRAP/POT FISHERIES:		
Caribbean mixed species trap/pot	>501	None documented.
Caribbean spiny lobster trap/pot	>197	None documented.
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX Bay, Sound, & Estuarine. West Indian manatee, FL.
Gulf of Mexico mixed species trap/pot	(1)	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot.	10	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot.	4,453	None documented.
U.S. Mid-Atlantic eel trap/pot	>700	None documented.
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA. Humpback whale, WNA. Minke whale, Canadian east coast. Harbor porpoise, GME/BF. Harbor seal, WNA. Gray seal, Northwest North Atlantic.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net).	751	None documented.
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented.
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented.
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean.
Gulf of Mexico haul/beach seine	(1)	None documented.
Southeastern U.S. Atlantic, haul/beach seine	25	None documented.

TABLE 2.—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed/injured
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	([1])	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented.

[1] Unknown.

List of Abbreviations Used in Table 2: FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; NC—North Carolina; SC—South Carolina; TX—Texas; WNA—Western North Atlantic.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. No comments were received regarding the economic impact of this rule. As a result, no regulatory flexibility analysis was prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.25 hours per report for new registrants and 0.15 hours per report for renewals). The requirement for reporting marine mammal injuries or moralities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). The 1995 EA concluded that implementation of those regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of reclassified fisheries, and therefore, this final rule is not expected to change the analysis or conclusion of the 1995 EA. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS will first prepare an environmental document as required under NEPA specific to that action.

This final rule will not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this final rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under section 7 of the ESA for that action.

This final rule will have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs or take reduction teams.

This final rule will not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: July 9, 2003.

Rebecca Lent,

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

[FR Doc. 03–17866 Filed 7–14–03; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 68, No. 135
Tuesday, July 15, 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.

GENERAL ACCOUNTING OFFICE

4 CFR Parts 27, 28 and 29

Personnel Appeals Board; Procedural Rules

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Proposed rule.

SUMMARY: The General Accounting Office Personnel Appeals Board (PAB) has authority with respect to employment practices within the General Accounting Office (GAO or agency), pursuant to the General Accounting Office Personnel Act of 1980. The PAB is proposing to revise its procedural regulations. The changes are intended to clarify the meaning of some sections, to correct a few provisions affected by changes in law or agency structure, and to refine certain procedures. The Board invites public comment on the proposed regulations.

DATES: Comments must be received on or before September 15, 2003, in order to be considered.

ADDRESSES: Comments may be mailed to: Clerk of the Board, General Accounting Office Personnel Appeals Board, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548. Comments may also be submitted by facsimile transmission to 202–512–7525.

FOR FURTHER INFORMATION CONTACT: Beth Don, Executive Director, or Susan Inzeo, Solicitor, 202–512–6137.

SUPPLEMENTARY INFORMATION: The General Accounting Office Personnel Appeals Board is authorized by Congress, pursuant to 31 U.S.C. 751–755, to hear and decide cases brought by GAO employees concerning various personnel matters including adverse or performance-based actions, claims of discrimination, alleged prohibited personnel practices, and labor-management relations. The Board also exercises oversight authority over equal employment opportunity at the agency, and has authority to consider, decide, and order corrective action in labor-management representation matters. The Board's current procedural regulations applicable to GAO appear at 4 CFR parts 27 and 28. The Board is proposing to revise these regulations. The changes are intended to clarify the meaning of some sections, to correct a few provisions affected by changes in law or agency structure, and to streamline certain procedures. The significant proposed changes are described below.

The Board no longer has jurisdiction over claims concerning employment practices at the Architect of the Capitol. As a result, the regulations in part 29 are being repealed and the part reserved. This also necessitates a few conforming changes to the provisions in parts 27 and 28.

Highlights of Significant Changes in the Proposed Regulations

The proposed revisions contain several significant refinements to the Board's procedures. Over the last several years, the Board has repeatedly observed that litigants not represented by the PAB Office of General Counsel (PAB/OGC) have been confused by such terms as the ''Right to Appeal Letter'' issued by that Office following an investigation and the ''Petition for Review'' to be filed with the Board. Many individuals misinterpreted the previous terminology to mean that the Board was reviewing the investigation or conclusion of its Office of General Counsel, or where applicable, GAO's Office of Opportunity and Inclusiveness, rather than exercising de novo authority to review the underlying agency action that was the subject of investigation. For this reason, the term ''Right to Petition Letter'' has been substituted for ''Right to Appeal Letter'' and the term ''Petition'' has been substituted for ''Petition for Review.'' Similarly, the revisions clarify that an ''appeal'' before the PAB is the stage of a Board proceeding when the full Board reviews the decision of a single member, panel of members, or appointed administrative judge.

Other notable proposed changes to the Board's regulations are summarized below:

Section 27.1 (The Board): Reference to part 29 is deleted, and the last sentence is revised to reflect the Board's role of reviewing rather than reconsidering the action of an individual member, panel or appointed administrative judge; reconsideration refers to the process whereby the same decisionmaker examines whether or not to change a decision.

Section 28.2 (Jurisdiction): The introductory language of paragraph (a) is streamlined. Subsection (b)(3) is revised to clarify that the Board's jurisdiction extends to determination of the appropriateness of a unit for collective bargaining.

Section 28.3 (General definitions): Several clarifying changes are found in the definitions section. Definitions for Clerk of the Board, Director of EEO Oversight, and Executive Director of the Personnel Appeals Board are new. The definition of Charge is revised to clarify that the term applies to requests for the PAB Office of General Counsel to investigate a matter. References to Recommended Decisions and Exceptions are deleted, in conformity with the Board's decision to delete section 28.86. ''Notice of Appeal'' is substituted for ''Request for Review'' to more clearly define the process of appealing an initial decision to the full Board. The definition of Pleading is revised to specifically include documents pertaining to a request for appellate review by the full Board. Workforce Restructuring Action (WRA), as defined by GAO Order 2351.1 (January 21, 2003), is added in the definition section and substituted throughout the regulations for Reduction in Force (RIF).

Section 28.8 (Informal procedural advice): This provision is revised to expand the list of persons who provide informal procedural advice at the Board.

Section 28.11 (Filing a charge with the Office of General Counsel): The section is revised to clarify the options as to how to file a charge. Subsection (d)(2) is revised to state that the PAB Office of General Counsel investigates rather than reviews actions underlying a charge.

Section 28.12 (General Counsel procedures): ''Right to Petition Letter'' is substituted for ''Right to Appeal Letter,'' and ''Petition'' is substituted for ''Petition for Review,'' throughout this section. Subsection (d) is reorganized and further divided into subdivisions (1), (2) and (3). Subsection (d)(2) is amplified to clarify that a charging party may file a Petition with the Board in accordance with § 28.18 even if the PAB Office of General Counsel does not find

reasonable grounds to proceed on behalf of the charging party.

New subsection (i) is added to explain the PAB Office of General Counsel policy on maintaining confidentiality of documents.

Section 28.13 (Special procedure for Workforce Restructuring Action): This provision is revised to reflect the agency's change in terminology, replacing ''Reduction in Force'' terminology with ''Workforce Restructuring Action'' and ''Civil Rights Office'' with ''Office of Opportunity and Inclusiveness.'' In addition, the provision is revised to clarify that the streamlined procedure, where applicable, may also extend to individuals raising civil rights claims.

Section 28.17 (Internal petitions of Board employees): Subsection (a)(2) is revised to designate the Board's Executive Director or General Counsel as alternate contact persons for Board employees who believe they have charges involving employment discrimination. The change also reflects that the employee may seek procedural advice from either the Board's Solicitor or its Office of General Counsel. Subsection (a)(3) is revised to specify that the PAB General Counsel arranges for processing of an internal complaint through the Board's Executive Director. The language of subsections (b)(1) and (2) is streamlined. In addition, reference to section 28.86(c) is deleted from subsection (c)(3) because of the Board's decision to delete 28.86.

Section 28.18 (Filing a petition with the Board): In addition to conforming changes of terminology, the revision clarifies the methods for filing and formalizes the 4 p.m. deadline that is Board operating practice.

Section 28.19 (Content of response by charged party): Subsection (a)(1) is revised to require that the pleading filed in response to a Petition clearly identify the specific allegations to which each responsive answer refers. This provision addresses the difficulty in understanding responses that do not contain specific references to the Petition, particularly where the response attempts to divide an answer. In addition, the section is reorganized to provide separately in new subsection (a)(2) that any other defenses shall be contained in the response. Previous subsection (a)(2) becomes (a)(3).

Section 28.21 (Amendments to petitions and motions practice):

Previous § 28.21(d) (General Counsel settlements) has been moved and redesignated as § 28.12(i).

Paragraph (b) is reorganized and further divided to more clearly delineate the specific requirements of motions practice before the Board. Section 28.21(b)(1), which includes filing requirements for motions practice before a single administrative judge, is revised to make clear that filings are made with the Clerk of the Board rather than the administrative judge. New § 28.22(b)(2) specifies the number of copies required when a matter is before the full Board. Both subsections (b)(1) and (b)(2) specify that responses must be filed in the same number as required for motions and within 20 days of service of the motion. New subsection (b)(3) requires that a motion for extension of time or other procedural motion must include a statement concerning the other party's position on the motion. New subsection (b)(4) states the Board operating procedure that motions or related submissions must be filed with the Board by 4 p.m. Subsection (b)(5) states the requirement that written motions and responses include a proposed order. Subsection (b)(6) states the governing standard that extensions of time will be granted for good cause only. Subsection (b)(7) provides that the administrative judge has discretion to allow oral argument on a motion.

New subsection (c) specifies rules and standards applicable to motions for summary judgment. The Board believes that written, specific procedures on such motions will provide clarification to parties about the method for seeking, the appropriateness of, and the standard applicable to a motion for summary judgment.

Section 28.24 (Sanctions): The introductory text of subsection (a) and subsection (a)(2) are revised to expressly include failure to comply with a subpoena as cause for imposing sanctions.

Section 28.42 (Discovery procedures and protective orders): Subsection (d)(5) is revised to set the discovery period to begin with service of notice of filing rather than with filing of a Petition. This change is necessary because of the unpredictable time accounted for when a Petition is filed by mail.

Section 28.46 (Motion for subpoena): Subsection (d), providing a procedure for obtaining a subpoena where the presiding administrative judge is not a Board member, is deleted.

Section 28.57 (Public hearings): Subsection (b) is revised to substitute ''management representative'' for ''technical representative.''

Section 28.61 (Burden and degree of proof): The definition of ''harmful error'' is tightened for clarity.

Sections 28.62 (Decision on the record) and 28.63 (Closing the record): Previous § 28.62 is redesignated § 28.63 to allow for a new § 28.62 specifying procedures to follow when the parties agree to forego a hearing and have the case decided on the record submitted. This streamlined procedure will save time and financial resources where appropriate.

Section 28.66 (Admissibility): This section is revised to expressly incorporate privilege as a grounds for exclusion of evidence. In addition, the revision clarifies that formal rules of evidence are not binding but may provide guidance in Board cases.

Section 28.86 (Board procedures; recommended decisions): This section is repealed and reserved. The Board believes the provision on initial decisions, 28.87, including the standard for full Board review, adequately addresses the rare instance of decisionmaking by an administrative judge who is not a Board member. In addition, providing a unified procedure will simplify the Board process for parties involved in adjudication.

Section 28.87 (Board procedures; initial decisions): Subsection (a) is revised to include reference to a decision by an administrative judge who is not a member of the Board. Subsection (g) is revised to clarify the standard applicable when a case is heard by the full Board. In particular, the Board's deference to demeanor-based credibility determinations is made explicit.

Section 28.88 (Board procedures; enforcement): The provision on compliance is revised for clarity and streamlining of requirements. The revision includes specific reference to those settlement agreements over which the Board retains jurisdiction.

Section 28.89 (Attorney's fees and costs): Reference to filing fee requests with the administrative judge who heard the case is deleted, as this provision did not encompass a request filed after an administrative judge has left the Board.

Section 28.97 (Class actions in EEO cases): This section is revised to clarify the different procedures for class actions in EEO cases. The revision explains that while there is no right to a de novo Board hearing in these cases, either party may request an evidentiary hearing at the Board or the Board may on its own determine that such a hearing is needed.

Section 28.101 (Termination of Board proceedings when suit is filed in Federal District Court): This section is revised to clarify when a proceeding before the Board will be terminated because of a suit pending in Federal District Court on the same cause of action.

Section 28.112 (Who may file petitions): Subsection (a)(3) is revised to

clarify the standard applicable when GAO files a representation petition.

Section 28.113 (Contents of representation petitions): Subsections (a)(7), (b), and (c) are revised to clarify the required contents of a representation petition.

Section 28.122 (Negotiability issues): Subsection (e) is revised to refer to § 28.87 for finality provisions, because of the repeal of § 28.86.

Section 28.132 (Disciplinary proceedings): Subsection (e) is revised by streamlining the description of the process for appealing from a final order involving disciplinary action.

Section 28.133 (Stay proceedings): This provision is revised substantially.

Subsection (a) is revised to clarify the conditions when an ex parte stay request may be filed.

Subsection (b) is revised to state the purpose for which either a further temporary stay or a permanent stay may be requested.

Subsection (c) is revised to provide for the Board or its presiding member to require further submissions or proceedings on a stay request, and to provide for an additional 30-day period to decide a pending request where necessary.

Subsection (d) is revised to clarify the standard applicable to a request for a further temporary stay under paragraph (b)(1).

Subsection (e) is revised to streamline and clarify the balancing test applicable to a request for permanent stay pending a decision on the merits.

Subpart K—Access to Records

New Subpart K, including §§ 28.160 and 28.161, is added to state the procedures governing an individual's request for information pertaining to himself or herself and maintained in the custody of the Personnel Appeals Board Office of General Counsel.

List of Subjects in 4 CFR Parts 27, 28 and 29

Administrative practice and procedures, Equal employment opportunity, Government employees, Labor management relations.

For the reasons stated in the preamble, the General Accounting Office Personnel Appeals Board proposes to amend 4 CFR Chapter I, Subchapter B, parts 27, 28, and 29 as follows:

PART 27—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; ORGANIZATION

1. The authority citation for part 27 continues to read as follows:

Authority: 31 U.S.C. 753.

§ 27.1 [Amended]

2. Amend § 27.1 as follows:

a. Remove the words ''parts 28 and 29'' in the second sentence and add in their place ''part 28'';

b. In the third sentence, remove the word ''reconsideration'' and add in its place the word ''review''.

3. Amend § 27.3 by revising the last sentence to read as follows:

§ 27.3 The General Counsel.

* * * The General Counsel, at the request of the Board, shall investigate matters under the jurisdiction of the Board, and otherwise assist the Board in carrying out its functions.

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE

4. The authority citation continues to read as follows:

Authority: 31 U.S.C. 753.

Subpart A—Purpose, General Definitions, and Jurisdiction

5. Amend § 28.1 by revising paragraphs (a), (b), and (c) to read as follows:

§ 28.1 Purpose and scope.

(a) The regulations in this part implement the Board's authority with respect to employment practices within the General Accounting Office (GAO), pursuant to the General Accounting Office Personnel Act of 1980 (GAOPA), 31 U.S.C. 751–755.

(b) The purpose of the rules in this part is to establish the procedures to be followed by:

(1) The GAO, in its dealings with the Board;

(2) Employees of the GAO or applicants for employment with the GAO, or groups or organizations claiming to be affected adversely by the operations of the GAO personnel system;

(3) Employees or organizations petitioning for protection of rights or extension of benefits granted to them under Subchapters III and IV of Chapter 7 of Title 31, United States Code; and

(4) The Board, in carrying out its responsibilities under Subchapters III and IV of Chapter 7 of Title 31, United States Code.

(c) The scope of the Board's operations encompasses the investigation and adjudication of cases arising under 31 U.S.C. 753.* * *

* * * * *

6. Amend § 28.2 by revising paragraphs (a) introductory text, and (b)(1) and (b)(3) to read as follows:

§ 28.2 Jurisdiction.

(a) The Board has jurisdiction to hear and decide the following:

* * * * *

(b) * * *

(1) An officer or employee petition involving a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days;

(2) * * *

(3) The appropriateness of a unit of employees for collective bargaining;

* * * * *

7. Revise § 28.3 to read as follows:

§ 28.3 General definitions.

In this part—

Charge means any request filed with the PAB Office of General Counsel to investigate any matter within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

Charging Party means any person filing a charge with the PAB Office of General Counsel for investigation.

Clerk of the Board means the Clerk of the Personnel Appeals Board.

Comptroller General means the Comptroller General of the United States.

Days means calendar days.

Director of EEO Oversight means the Personnel Appeals Board Director of EEO Oversight.

Executive Director means the Executive Director of the Personnel Appeals Board.

GAO means the General Accounting Office.

General Counsel means the General Counsel of the Board, as provided for under 31 U.S.C. 752.

Initial Decision means the adjudicatory statement of a case that is issued by an administrative judge who is a member of or appointed by the Board.

Notice of Appeal means a request filed with the full Board appealing from an initial decision.

Person means an employee, an applicant for employment, a former employee, a labor organization or the GAO.

Petition means any request filed with the Board for action to be taken on matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

Petitioner means any person filing a petition for Board consideration.

Pleading means a document that initiates a cause of action before the

Board, responds to a cause of action, amends a cause of action, responds to an amended cause of action, requests reconsideration of a decision, responds to such a request, requests appellate review by the full Board or responds to such a request.

Request for Reconsideration means a request, filed with the administrative judge who rendered the initial decision, to reconsider that decision in whole or part.

Solicitor means the attorney appointed by the Board to provide advice and assistance to the Board in carrying out its adjudicatory functions and to otherwise provide assistance as directed by the Board.

Workforce Restructuring Action (WRA) means the release of an employee from a job group by separation, demotion, reassignment requiring displacement, or furlough for more than 30 days when the cause of action is lack of work, shortage of funds, insufficient personnel ceiling, reorganization or realignment, an individual's exercise of reemployment or reinstatement rights, correction of skills imbalances, or reduction of high-grade supervisor or managerial positions.

8. Amend § 28.4 by adding paragraph (d) to read as follows:

§ 28.4 Computation of time.

* * * * *

(d) No written submission shall be accepted by the Clerk of the Board after 4:00 p.m., Monday through Friday.

Subpart B—Procedures

9. Amend § 28.8 by revising paragraph (a) to read as follows:

§ 28.8 Informal procedural advice.

(a) Persons may seek informal advice on all aspects of the Board's procedures by contacting the Board's Executive Director, Director of EEO Oversight, Solicitor, General Counsel or the Clerk of the Board.

* * * * *

10. Amend § 28.10 by revising the heading and the first sentence of paragraph (a) and paragraph (b)(1) to read as follows:

§ 28.10 Notice of petition rights.

(a) The GAO shall be responsible for ensuring that employees are routinely advised of their rights to petition the Board and that employees who are the object of an adverse or performance-based action are, at the time of the action, adequately advised of their rights to petition the Board.* * *

(b) * * *

(1) Time limits for filing a petition with the Board and the address of the Board;

* * * * *

11. Amend § 28.11 by revising the heading and paragraphs (c), (d)(2) and the last sentence of paragraph (e) to read as follows:

§ 28.11 Filing a charge with the Office of General Counsel.

* * * * *

(c) *How to file.* Charges may be filed with the Office of General Counsel by personal delivery (including commercial carrier) or by mail. The address to be used differs for the two kinds of filing.

(1) A charge may be filed by personal delivery at the Office of General Counsel, Personnel Appeals Board, GAO, Suite 580, Union Center Plaza II, 820 First Street, NE., Washington, DC 20002.

(2) A charge may be filed by mail addressed to the Office of General Counsel, Personnel Appeals Board, Suite 580, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548 *or* Office of General Counsel, Personnel Appeals Board, GAO, Suite 580, Union Center Plaza II, 820 First Street, NE., Washington, DC 20002. When filed by mail, the postmark shall be the date of filing for all submissions to the Office of General Counsel.

(d) * * *

(2) The names and titles of persons, if any, responsible for actions the charging party wishes to have the Office of General Counsel investigate;

* * * * *

(e) * * * When attorney fees are the only issue raised in a charge to the Office of General Counsel, the General Counsel shall transmit the charge to the Board for processing under §§ 28.18 through 28.88 as a petition.

12. Amend § 28.12 as follows:

a. Revise paragraphs (c), (d), and (g).

b. Redesignate § 28.21(d) as paragraph (h) and revise redesignated paragraph (h).

c. Add new paragraph (i).

The additions and revisions read as follows:

§ 28.12 General Counsel procedures.

* * * * *

(c) Following the investigation, the Office of General Counsel shall provide the charging party with a Right to Petition Letter. Accompanying this letter will be a statement of the General Counsel advising the charging party of the results of the investigation. This statement of the General Counsel is not subject to discovery and may not be introduced into evidence before the Board.

(d)(1) If the General Counsel determines that there are reasonable grounds to believe that the charging party's rights under Subchapters III and IV of Chapter 7 of Title 31, United States Code, have been violated, then the General Counsel shall represent the charging party unless the charging party elects not to be represented by the Office of General Counsel.

(2) If, following the investigation, the General Counsel determines that there are not reasonable grounds to believe that the charging party's rights under Subchapters III and IV of Chapter 7 of Title 31, United States Code, have been violated, then the General Counsel shall not represent the charging party. The charging party may nonetheless file a petition with the Board in accordance with § 28.18.

(3) Any charging party may represent him or herself or obtain other representation.

* * * * *

(g) If 180 days have elapsed since the filing of the charge, and the Office of General Counsel has not completed the investigation and issued a Right to Petition Letter, the charging party may bring his or her case directly to the Board by filing a petition in accordance with § 28.18. If a charging party exercises this option to file a petition with the Board without waiting for the completion of the investigation, the Office of General Counsel shall not represent the charging party in proceedings before the Board. The charging party may represent him- or herself or obtain other representation. The Office of General Counsel shall close the investigation of the charge upon being notified by the Clerk of the Board that the charging party has filed a petition with the Board under this paragraph (g).

(h) Office of General Counsel settlement: Where the General Counsel under paragraph (a) of this section transmits a settlement which has been agreed to by the parties, the settlement agreement shall be the final disposition of the case.

(i) Confidentiality: (1) It is the Office of General Counsel's policy to protect against the disclosure of documents obtained during the investigation, as a means of ensuring that Office's continuing ability to obtain all relevant information. However, if the Office of General Counsel files a petition with the Personnel Appeals Board on behalf of a charging party pursuant to this section, that Office may disclose the identity of witnesses and a synopsis of their

expected testimony. Documents to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements of § 28.56.

(2) Unless so ordered by a court of competent jurisdiction, no employee of the Personnel Appeals Board Office of General Counsel shall produce or disclose any information or records acquired as part of the performance of his/her official duties or because of his/her official status. Before producing or disclosing such information or records pursuant to court order, an employee shall notify the General Counsel.

13. Revise § 28.13 to read as folows:

§ 28.13 Special procedure for Workforce Restructuring Action.

In the event of a Workforce Restructuring Action (WRA) resulting in an individual's separation from employment, an aggrieved employee may choose to file a petition directly with the Personnel Appeals Board, without first filing the charge with the PAB's Office of General Counsel pursuant to § 28.11. Pursuant to § 28.98, individuals raising discrimination issues in connection with a WRA action need not file a complaint with GAO's Office of Opportunity and Inclusiveness before pursuing a WRA challenge alleging discrimination, either by filing directly with the PAB or by filing a charge with the Board's Office of General Counsel.

Hearing Procedures for Cases Before the Board—General

14. Amend § 28.15 by removing the word ''appeals'' and adding in its place the word ''petitions'' in the first sentence.

15. Amend § 28.17 by revising the heading, paragraphs (a)(2) and (a)(3), paragraphs (b)(1) and (b)(2) and paragraphs (c)(1), (c)(2), and (c)(3) to read as follows:

§ 28.17 Internal petitions of Board employees.

(a) * * *

(2) When an employee of the Board believes that he or she has been denied his or her right to equal employment opportunity, the employee shall bring this matter to the attention of the Board's Executive Director or General Counsel. If the matter cannot be resolved within 10 days, the Executive Director shall notify the employee of his or her right to file an EEO complaint. The employee may consult with either the Board's Solicitor or General Counsel and seek advice with regard to procedural matters concerning the filing of an EEO charge. The employee shall have 20 days from service of this notice to file an EEO charge with the PAB Office of General Counsel. Upon receipt of an EEO charge, the General Counsel shall arrange with the Executive Director for processing in accordance with paragraph (b) of this section. If the EEO allegations involve challenge to a WRA-based separation, the employee may choose to expedite the procedures by filing a petition directly with the Board.

(3) When an employee of the Board wishes to raise any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange with the Executive Director for processing in accordance with paragraph (b) of this section. If the challenged action is a WRA-based separation from employment, the employee may choose to expedite the procedures by filing a petition directly with the Board.

(b) * * *

(1) If agreed to by the Office of Special Counsel or the EEOC, as appropriate, that body will appoint and detail a person from among its attorneys to perform the functions of the General Counsel.

(2) If the Special Counsel or the EEOC does not agree to such a procedure, an appointment of an attorney will be sought from the Federal Mediation and Conciliation Service (FMCS).

(3) * * *

(c) * * *

(1) If agreed to by the MSPB or the EEOC, as appropriate, that body will appoint and detail one of its administrative law judges (ALJ) or administrative judges (AJ) to perform the Board's adjudicative functions.

(2) If neither the MSPB nor the EEOC agrees to such a procedure, an appointment of an arbitrator will be sought from the FMCS.

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the Board in employee cases. The decision of the administrative law judge, administrative judge or arbitrator shall be a final decision of the Board. The procedure for judicial review of the decision shall be the same as that described in § 28.90.

* * * * *

16. Amend § 28.18 by revising paragraphs (a), (b), (c), (d), introductory text, (e) and (f) to read as follows:

§ 28.18 Filing a petition with the Board.

(a) *Who may file.* Any person who is claiming to be affected adversely by GAO action or inaction that is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code, or who is alleging that GAO or a labor organization engaged or is engaging in an unfair labor practice, may file a petition if one of the following is met:

(1) The person has received a Right to Petition Letter from the Board's Office of General Counsel; or

(2) At least 180 days have elapsed from the filing of the charge with the Board's Office of General Counsel and that Office has not issued a Right to Petition Letter; or

(3) The person was separated due to a Workforce Restructuring Action and chooses to file a petition directly with the Board, without first filing with the Board's Office of General Counsel, as provided in § 28.13.

(b) *When to file.* (1) Petitions filed pursuant to paragraph (a)(1) of this section must be filed within 30 days after receipt by the charging party of the Right to Petition Letter from the Board's Office of General Counsel.

(2) Petitions filed pursuant to paragraph (a)(2) of this section may be filed at any time after 180 days have elapsed from the filing of the charge with the Board's Office of General Counsel, provided that that Office has not issued a Right to Petition Letter concerning the charge.

(3) Petitions filed pursuant to paragraph (a)(3) of this section must be filed within 30 days after the effective date of the separation due to a Workforce Restructuring Action.

(c) *How to file.* (1) A petition may be filed by hand delivery at the office of the Board, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC 20002. It must be received by 4 p.m., Monday through Friday, on the date that it is filed.

(2) A petition may be filed by mail addressed to the Personnel Appeals Board, GAO, Suite 560, Union Center Plaza II, 441 G Street NW., Washington, DC 20548 or Personnel Appeals Board, GAO, Suite 560, Union Center Plaza II, 820 First Street NE., Washington, DC 20002. When filed by mail, the postmark shall be the date of filing for all submissions to the Board.

(d) *What to file.* The petition shall include the following information:

* * * * *

(e) *Failure to raise a claim or defense.* Failure to raise a claim or defense in the petition shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

(f) *Non-EEO class actions.* One or more persons may file a petition as representatives of a class in any matter

within the Board's jurisdiction. For the purpose of determining whether it is appropriate to treat a petition as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure. See § 28.97 for EEO class actions.

17. Revise § 28.19(a) to read as follows:

§ 28.19 Content of response by charged party.

(a) Within 20 days after service of a copy of a petition, the GAO or other charged party shall file a response containing at least the following:

(1) A statement of the position of the charged party on each allegation set forth therein, including admissions, denials or explanations. If the petition contains numbered paragraphs, the responses should reference the paragraph numbers. If the petition does not contain numbered paragraphs, the responses should quote or otherwise clearly identify the specific allegations of the petition.

(2) Any other defenses to the petition.

(3) Designation of, and signature by, the representative authorized to act for the charged party in the matter.

* * * * *

18. Amend § 28.20 by revising the first and last sentences of paragraph (b)(1) and the first two sentences of paragraph (b)(2) to read as follows:

§ 28.20 Number of pleadings, service and response.

* * * * *

(b) *Service.* (1) The Board will serve copies of a petition upon the parties to the proceeding by mail and/or by facsimile. * * * The Board will not serve copies of any pleadings, motions, or other submissions by the parties after the initial petition.

(2) The parties shall serve on each other one copy of all pleadings other than the initial petition. Service shall be made by mailing, by facsimile or by delivering personally a copy of the pleading to each party on the service list previously provided by the Board. * * *

* * * * *

19. Revise § 28.21 to read as follows:

§ 28.21 Amendments to petitions and motions practice.

(a) *Amendments to petitions.* The Board, at its discretion, may allow amendments to a petition as long as all persons who are parties to the proceeding have adequate notice to prepare for the new allegations and if to do so would not prejudice the rights of the other parties or unduly delay the proceedings.

(b) *Motions practice.* (1) When an action is before an administrative judge, motions of the parties shall be filed with the Clerk of the Board and shall be in writing except for oral motions made during the hearing. An original and 3 copies of written motions shall be filed with the Clerk of the Board. An original and 3 copies of responses in opposition to written motions must be filed with the Clerk of the Board within 20 days of service of the motion unless the administrative judge requires a shorter time.

(2) When an action is before the full Board, an original and 7 copies of any motion shall be filed with the Clerk of the Board. An original and 7 copies of any responses in opposition to motions must be filed with the Clerk of the Board within 20 days of service of the motion unless the Board requires a shorter time.

(3) A party filing a motion for extension of time, a motion for postponement of a hearing, or any other procedural motion must first contact the other party to determine whether there is any objection to the motion and must state in the motion whether the other party has any objection.

(4) No motions, responses or other submissions will be accepted for filing by the Clerk of the Board after 4:00 p.m., Monday through Friday. All written submissions shall be served simultaneously upon the other parties to the proceeding. A certificate of service must be attached showing service by mail, facsimile or personal delivery of the submission to the other parties. Further submissions by either party may be filed only with the approval of the administrative judge or full Board.

(5) All written motions and responses thereto shall include a proposed order, where applicable.

(6) Motions for extension of time will be granted only upon a showing of good cause.

(7) *Oral argument.* The administrative judge may allow oral argument on the motion at his or her discretion.

(c) *Motions for summary judgment.* (1) Either party may move for summary judgment by filing a written motion no later than 14 days prior to the commencement of the hearing or as otherwise ordered by the administrative judge.

(2) Motions for summary judgment must be accompanied by a statement of material facts for which there is no genuine dispute and a statement of reasons in support of the motion. The motion may be supported by documents, affidavits, or other evidence.

(3) Summary judgment will be granted if the pleadings, depositions, answers to interrogatories, admissions, affidavits, if any, and other documents show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

(4) A party moving for summary judgment must make a showing sufficient to establish the existence of each element essential to that party's cause of action and for which that party bears the burden of proof.

(5) When a party moves for summary judgment, the Board will evaluate the motion on its own merits, resolving all reasonable inferences against the moving party.

§ 28.22 [Amended]

20. Amend § 28.22 by removing the words ''File recommended or'' and adding the word ''Issue'' in their place in paragraph (b)(12).

21. Amend § 28.24 as follows:

a. Revise paragraph (a), introductory text, and paragraph (a)(2) and

b. In paragraph (b), remove the words ''an appeal'' and add the words ''a petition''.

The revision reads as follows:

§ 28.24 Sanctions.

* * * * *

(a) *Failure to comply with an order or subpoena.* When a party fails to comply with an order or subpoena (including an order for the taking of a deposition, for the production of evidence within the party's control, for an admission, or for production of witnesses), the administrative judge may:

(1) * * *

(2) Prohibit the party failing to comply with such order or subpoena from introducing, or otherwise relying upon, evidence relating to the information sought.

* * * * *

Parties, Practitioners and Witnesses

22. Revise the first two sentences of paragraph (a) of § 28.25 to read as follows:

§ 28.25 Representation.

(a) All parties to a petition may be represented in any matter relating to the petition. The parties shall designate their representatives, if any, in the petition or responsive pleading. * * *

* * * * *

23. Amend § 28.27 by revising the first two sentences of paragraph (c) to read as follows:

§ 28.27 Intervenors.

* * * * *

(c) A motion for permission to intervene will be granted where a determination is made by the administrative judge or the Board, where the case is being heard en banc, that the requestor will be affected directly by the outcome of the proceeding. Denial of a motion for intervention may be appealed to the full Board. * * *

* * * * *

§ 28.28 [Amended]

24. Amend § 28.28 by removing the word ''appeal'' and adding the word ''petition'' in its place in paragraph (a).

25. Amend § 28.29 by revising paragraph (a)(2) as follows:

§ 28.29 Consolidation or joinder.

(a) * * *

(2) Joinder may occur where one person has two or more petitions pending and they are united for consideration. For example, a single petitioner who has one petition pending challenging a 30-day suspension and another petition pending challenging a subsequent dismissal might have the cases joined.

* * * * *

Discovery

26. Amend § 28.41 by removing the word ''appeal'' in the first sentence and add in its place the word ''review'' in paragraph (b).

27. Amend § 28.42 by revising the first sentence of paragraph (d)(5) to read as follows:

§ 28.42 Discovery procedures and protective orders.

* * * * *

(d) * * *

(5) Discovery shall be completed by the time designated by the administrative judge, but no later than 65 days after the service of the notice of filing of a petition. * * *

Subpoenas

28. Amend § 28.46 as follows:

a. Revise paragraph (b).

b. Remove paragraph (d).

The revision reads as follows:

§ 28.46 Motion for subpoena.

* * * * *

(b) *Motion.* (1) A motion for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under § 28.46(a) shall be submitted to the administrative judge at least 15 days in advance of the date scheduled for the commencement of the hearing.

(2) If the subpoena is sought as part of the discovery process, the motion shall be submitted to the administrative judge at least 15 days in advance of the date set for the attendance of the witness at a deposition or the production of documents.

* * * * *

Hearings

29. Amend § 28.56 by adding a second sentence in paragraph (f) to read as follows:

§ 28.56 Hearing procedures, conduct and copies of exhibits.

* * * * *

(f) * * * Multiple exhibits shall be indexed and tabbed.

* * * * *

30. Amend § 28.57 by revising paragraph (b) to read as follows:

§ 28.57 Public hearings.

* * * * *

(b) At the hearing, the petitioner, the petitioner's representative, GAO's legal representative, and a GAO management representative, who is not expected to testify, each have a right to be present. The Agency management representative shall be designated prior to the hearing.

31. Amend § 28.61 as follows:

a. In paragraph (b) introductory text, remove the word ''may'' and add in its place the word ''shall,''

b. Revise the definition of *harmful error* in paragraph (d).

The revision reads as follows:

§ 28.61 Burden and degree of proof.

* * * * *

(d) Definitions. For purposes of this section, the following definitions shall apply:

Harmful error means error by the agency in the application of its procedures which, in the absence or cure of the error, might have caused the agency to reach a conclusion different from the one reached.

* * * * *

32. Redesignate § 28.62 as § 28.63, and add a new § 28.62 to read as follows:

§ 28.62 Decision on the record.

(a) The parties may agree to forego a hearing and request that the matter be decided by the presiding administrative judge based upon the record submitted.

(b) If the parties agree to forego a hearing under this subpart, the record will close on the date that the administrative judge sets as the final date for the receipt or filing of submissions of the parties. Once the record closes, no additional evidence or argument will be accepted unless the party seeking to submit it demonstrates that the evidence was not available before the record closed.

(c) In matters submitted for decision on the record under this section, the parties bear the same burdens of proof set forth in § 28.61.

(d) A decision obtained under this section is a decision on the merits of the case and is appealable as if the matter had been adjudicated in an evidentiary hearing.

§ 28.63 Closing the record. [Redesignated from § 28.62]

Evidence

33. Revise § 28.66 to read as follows:

§ 28.66 Admissibility.

Evidence or testimony may be excluded from consideration by the administrative judge if it is irrelevant, immaterial, unduly repetitious or protected by privilege. The administrative judge is not bound by formal evidentiary rules but may rely on the Federal Rules of Evidence for guidance.

34. Revise § 28.69 to read as follows:

§ 28.69 Judicial notice.

The administrative judge on his or her own motion or on motion of a party, may take judicial notice of a fact which is not subject to reasonable dispute because it is either: A matter of common knowledge; or A matter capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Judicial notice taken of any fact satisfies a party's burden of proving the fact noticed.

Board Decisions, Attorney's Fees and Judicial Review

§ 28.86 [Removed and reserved]

35. Remove and reserve § 28.86.

36. Amend § 28.87 by revising paragraphs (a) and (b) and paragraph (g), introductory text,to read as follows:

§ 28.87 Board procedures; initial decisions.

(a) When a case is heard in the first instance by a single Board member, a panel of members, or a non-member appointed by the Board, an initial decision shall be issued by that member, panel or individual and served upon the parties.

(b) An aggrieved party may seek reconsideration of or may appeal the initial decision in the following manner:

(1) Within 10 days of the service of the initial decision, such a party may file and serve a request for reconsideration with the administrative judge or panel rendering that decision. Filing of the request for reconsideration shall toll the commencement of the 15 day period for filing a notice of appeal

with the full Board, pending disposition of the request for reconsideration by the administrative judge or panel. The administrative judge or panel shall determine if a response is required, and if so, will fix by order the time for the filing of the response. A motion for reconsideration will not be granted without providing an opportunity for response.

(2) Within 15 days of the service of the initial decision, such a party may appeal to the full Board by filing and serving a notice of appeal to the Board.

* * * * *

(g) In conducting its examination of the initial decision, the Board may substitute its own findings of fact and conclusions of law, but the Board generally will defer to demeanor-based credibility determinations made in the initial decision. In determining whether some action other than affirmance of the initial decision is required, the Board will also consider whether:

* * * * *

37. Amend § 28.88 as follows:

a. Revise paragraphs (a), (b), and (d),

b. Add paragraphs (e) and (f).

The revisions and additions read as follows:

§ 28.88 Board procedures; enforcement.

(a) All decisions and orders of the Board shall be complied with promptly. Whenever a Board decision or order requires a person or party to take any action, the Board may require such person or party to provide the Board and all parties with a compliance report.

(b) When the Board does not receive a report of compliance in accordance with paragraph (a) of this section, the Solicitor shall make inquiries to determine the status of the compliance report and shall report upon the results of the inquiry to the Board.

* * * * *

(d) Upon receipt of a non-compliance report from its Solicitor or of a petition for enforcement of a final decision, the Board may issue a notice to any person to show cause why there was non-compliance. Apart from remedies available to the parties, the Board may seek judicial enforcement of a decision or order issued pursuant to a show cause proceeding.

(e) If the parties enter into a settlement agreement that has been reviewed and approved by the administrative judge, the Board retains jurisdiction to enforce the terms of such settlement agreement.

(f) Any party to a settlement agreement over which the Board retains jurisdiction may petition the Board for enforcement of the terms of such settlement agreement.

38. Revise § 28.89 to read as follows:

§ 28.89 Attorney's fees and costs.

Within 20 days after service of a final decision by the Board, or within 20 days after the date on which an initial decision becomes final pursuant to § 28.87(d), the petitioner, if he or she is the prevailing party, may submit a request for the award of reasonable attorney's fees and costs. GAO may file a response within 20 days after service of the request. Motions for attorney's fees shall be filed in accordance with § 28.21 of these regulations. Rulings on attorney's fees and costs shall be consistent with the standards set forth at 5 U.S.C. 7701(g). The decision of the administrative judge concerning attorney's fees and costs shall be subject to review and shall become final according to the provisions of § 28.87.

Subpart D—Special Procedures; Equal Employment Opportunity (EEO) Cases

39. Amend § 28.95 by revising paragraphs (a) and (d) to read as follows:

§ 28.95 Purpose and scope.

* * * * *

(a) Section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16), prohibiting discrimination based on race, color, religion, sex or national origin;

* * * * *

(d) Title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a) prohibiting discrimination on the basis of disability; or

* * * * *

40. Amend § 28.97 by revising paragraph (b), introductory text, the first sentence of paragraph (c), paragraphs (d), and (e) to read as follows:

§ 28.97 Class actions in EEO cases.

* * * * *

(b) An appeal from GAO's disposition of any EEO class complaint may be submitted to the Board at the following times:

* * * * *

(c) In EEO class actions, employees shall not file charges with the Board's Office of General Counsel and that Office shall not undertake an independent investigation of a class complaint that has been filed with GAO.

* * *

(d) An appeal of a GAO disposition of an EEO class complaint shall be decided by the Board based upon a review of the administrative record, including any recommended findings and conclusions, developed in the GAO class complaint process. In such cases, the Board will employ the same standards of review set forth in § 28.87.

(e) The parties to an EEO class complaint do not have a right to a de novo evidentiary hearing before the Board. However, either the class representative or GAO may file a motion requesting an evidentiary hearing, rather than having the Board decide the case upon review of the administrative record already developed by GAO. The Board, in its discretion, may grant such motion or, upon its own review of the administrative record, may direct that a new hearing be conducted. If the Board orders a new evidentiary hearing, the class representative shall file a petition on behalf of the class and the case shall be adjudicated before an administrative judge of this Board pursuant to the procedures applicable to an individual EEO complaint processed under § 28.98 of these regulations. For the purpose of determining whether it is appropriate to treat a petition as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure.

41. Amend § 28.98 by revising paragraphs (d) and (e)(1) to read as follows:

§ 28.98 Individual charges in EEO cases.

* * * * *

(d) *Special rules for WRA based actions.* An individual alleging discrimination issues in connection with a WRA-based separation may follow the procedures outlined above in paragraph (c) of this section for adverse and performance based actions, or may choose instead a third option. In accordance with the provisions of § 28.13, such an individual may challenge that action by filing directly with the PAB, thus bypassing both the Office of Opportunity and Inclusiveness and the Board's Office of General Counsel.

(e)(1) The charging party shall file the charge with the Board's Office of General Counsel in accordance with § 28.11. That Office shall investigate the charge in accordance with § 28.12.

* * * * *

§ 28.99 [Amended]

42. Amend § 28.99 as follows:

a. Remove ''for review'' in the heading,

b. In paragraph (b)(1), add ''Agency'' after ''Provision for.''

43. Revise § 28.101to read as follows:

§ 28.101 Termination of Board proceedings when suit is filed in Federal District Court.

Any proceeding before the Board shall be terminated when an employee or applicant who is alleging violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16, Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, the Age Discrimination in Employment Act, 29 U.S.C. 633a, or the Rehabilitation Act, 29 U.S.C. 791, files suit in Federal District Court on the same cause of action pending before the Personnel Appeals Board.

44. Amend § 28.112 by revising paragraph (a)(3) to read as follows:

§ 28.112 Who may file petitions.

(a) * * *

(3) The GAO if it has a good faith reason to doubt that a majority of employees in the bargaining unit wish to be represented by the labor organization which is currently the exclusive representative of those employees;

* * * * *

45. Amend § 28.113 by revising paragraph (a)(7), the second sentence of paragraph (b), and the first sentence of paragraph (c) to read as follows:

§ 28.113 Contents of representation petitions.

(a) * * *

(7) Membership cards, dues records, or signed statements by employees indicating their desire to support the petition of the labor organization, or similar evidence acceptable to the Board, showing that at least 30 percent of the employees in the proposed unit support the representation petition.

(b) * * * Additionally, a petition under § 28.112(a)(2) shall include evidence satisfactory to the Board that at least 30 percent of the employees in the unit support the petition to determine whether the employees wish to continue to be represented by the labor organization currently having bargaining rights.

(c) The contents of petitions filed under § 28.112(a)(3) shall conform to those provided in petitions under paragraph (a) of this section except that the information required by paragraphs (a)(4) and (a)(7) of this section need not be supplied. * * *

* * * * *

Subpart F—Special Procedures; Unfair Labor Practices

46. Amend § 28.121(c) as follows:

a. Remove ''for review'' after the word ''petition'',

b. Remove the term ''14b'' and add in its place the term ''15e'',

c. Add the words ''Office of '' before the phrase ''General Counsel''.

47. Amend § 28.122 as follows:

a. Remove ''; compelling need'' from the heading,

b. In paragraph (e) remove ''§§ 28.86–28.87'' and in its place add ''§ 28.87''.

48. Amend § 28.123 as follows:

a. Revise paragraph (a)(4),

b. In paragraph (c), remove the words ''Labor/Management Relations'' and add the words ''Employment Standards'' in their place.

The revision reads as follows:

§ 28.123 Standards of conduct for labor organizations.

(a) * * *

(4) Fiscal integrity.

* * * * *

Subpart G—Corrective Action, Disciplinary and Stay Proceedings

§ 28.131 [Amended]

49. Amend paragraph (d) of § 28.131 by removing the words ''for review'' after ''petition'' and adding the words ''Board's Office of'' before the phrase ''General Counsel''.

§ 28.132 [Amended]

50. Amend § 28.132 by removing the first sentence in paragraph (e).

51. Amend § 28.133 by revising paragraphs (a), (b), (c), (d), and (e) to read as follows:

§ 28.133 Stay proceedings.

(a) Prior to the effective date of any proposed personnel action, the Board's Office of General Counsel may request, ex parte, the issuance of an initial stay of the proposed personnel action for a period not to exceed 30 days if the General Counsel believes that the proposed personnel action arises out of a prohibited personnel practice. The request shall be in writing and shall specify the nature of the action to be stayed and the basis for the General Counsel's belief. The Board's Office of General Counsel shall serve a copy of the request on the GAO. Within three business days of its filing, the request shall be granted by the Board member designated by the Board Chair to entertain the request unless that Board member determines that the request either:

(1) Fails to satisfy the requirements of this paragraph or

(2) On its face, conclusively establishes that the proposed personnel action did not arise out of an alleged prohibited personnel practice as specified by the General Counsel.

(b) The Board's Office of General Counsel may request the issuance of either:

(1) Further temporary stays for the purpose of allowing additional time to pursue its investigation or

(2) A permanent stay for the purpose of staying the proposed personnel action until a final decision is rendered.

(c) Requests for stays under paragraph (b) of this section shall be received by both the Board and the GAO no less than 10 days before the expiration of any stay then in effect. Any response from GAO to the request shall be received by both the Board and the Board's Office of General Counsel no less than three days before the expiration of any stay then in effect. Any request for stay under this paragraph shall be decided by the Board member who issued the prior stay under paragraph (a) of this section, unless the Board Chair determines that it should be decided by the Board en banc. The Board member, or Board en banc, may require further briefing, oral argument, submission of affidavits or other documentary evidence, or may conduct an evidentiary hearing before rendering a decision. Any stay then in effect may be extended, sua sponte, for a period not to exceed 30 days to enable the Board member, or Board en banc, a reasonable opportunity to render a decision.

(d) A temporary stay under paragraph (b)(1) of this section may be issued if the Board member, or Board en banc, determines that under all of the circumstances the interests of justice would be served by providing more time for the Board's Office of General Counsel to pursue the investigation. However, the duration of any single temporary stay shall not exceed the amount of time reasonably necessary to acquire sufficient information to support a request for a permanent stay in the exercise of a high degree of diligence and, in no event, shall any single temporary stay exceed 60 days except as provided under paragraph (c) of this section for the purpose of allowing time to render a decision.

(e) In determining whether a permanent stay under paragraph (b)(2) of this section should be issued, the Board member, or Board en banc, shall:

(1) Assess the evidence adduced by each side as to whether the proposed personnel action arises out of an alleged prohibited personnel practice as specified by the Board's General Counsel;

(2) Assess the nature and gravity of any harm that could inure to each side if the request for permanent stay is either granted or denied; and

(3) Balance the assessments conducted under paragraphs (e)(1) and (2) of this section.

* * * * *

Subpart I—Ex Parte Communications

52. Amend § 28.146 by revising the second sentence of paragraph (a) to read as follows:

§ 28.146 Explanation and definitions.

(a) * * * The only ex parte communications that are prohibited are those that involve the merits of the case or those that violate other rules requiring submissions to be in writing. * * *

* * * * *

53. Add Subpart K, consisting of §§ 28.160 and 28.161 to read as follows:

Subpart K—Access to Records

Sec.
28.160 Request for records.
28.161 Denial of access to information—Appeals.

Subpart K—Access to Records

§ 28.160 Request for records.

(a) Individuals may request access to records pertaining to them that are maintained as described in 4 CFR part 83, by addressing an inquiry to the PAB General Counsel either by mail or by appearing in person at the Personnel Appeals Board Office of General Counsel, 820 First Street, NE., Suite 580, Washington, DC 20002, during business hours on a regular business day. Requests in writing should be clearly and prominently marked ''Privacy Act Request.'' Requests for copies of records shall be subject to duplication fees set forth in 4 CFR 83.17.

(b) Individuals making a request in person shall be required to present satisfactory proof of identity, preferably a document bearing the individual's photograph. Requests by mail or submitted other than in person should contain sufficient information to enable the General Counsel to determine with reasonable certainty that the requester and the subject of the record are one and the same. To assist in this process, individuals should submit their names and addresses, dates and places of birth, social security number, and any other known identifying information such as an agency file number or identification number and a description of the circumstances under which the records were compiled.

(c) *Exemptions from disclosure.* The Personnel Appeals Board General Counsel and the Personnel Appeals Board, in deciding what records are exempt from disclosure, will follow the policies set forth in 4 CFR part 83.

§ 28.161 Denial of Access to Information—Appeals.

(a) If a request for access to information under § 28.150 is denied, the General Counsel shall give the requester the following information:

(1) The General Counsel's name and business mailing address;

(2) The date of the denial;

(3) The reasons for the denial, including citation of appropriate authorities; and

(4) The individual's right to appeal the denial as set forth in paragraphs (b) and (c) of this section.

(b) Any individual whose request for access to records of the PAB General Counsel has been denied in whole or part by the General Counsel may, within 30 days of receipt of the denial, challenge that decision by filing a written request for review of the decision with the Personnel Appeals Board, 820 First Street, NE., Suite 560, Washington, DC 20002.

(c) The appeal shall describe:

(1) The initial request made by the individual for access to records;

(2) The General Counsel's decision denying the request; and

(3) The reasons why that decision should be modified by the Board.

(d) The Board, en banc, may in its discretion render a decision based on the record, may request oral argument, or may conduct an evidentiary hearing.

PART 29—[REMOVED AND RESERVED]

54. Remove and reserve Part 29.

Anne M. Wagner,

Chair, Personnel Appeals Board, General Accounting Office.

[FR Doc. 03–17785 Filed 7–14–03; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF AGRICULTURE

7 CFR Part 2903

Office of Energy; Biodiesel Fuel Education Program—Administrative Provisions

AGENCY: Office of the Chief Economist, Office of Energy Policy and New Uses, USDA.

ACTION: Proposed rule.

SUMMARY: The Office of Energy Policy and New Uses (OEPNU) proposes to add new regulations for the purpose of administering the Biodiesel Fuel Education Program conducted under the authority of section 9004 of the Farm Security and Rural Investment Act of 2002. This action establishes and codifies the administrative procedures to be followed in the solicitation of competitive proposals, the evaluation of such proposals, and the award and administration of grants under this Program.

DATES: The Agency must receive comments on or before August 14, 2003.

ADDRESSES: Comments should be sent to James Duffield, Economist, OEPNU/USDA, 300 7th Street SW., Reporters Building, Room 361, Washington, DC 20024. Comments may also be sent via electronic mail to *jduffield@oce.usda.gov.*

FOR FURTHER INFORMATION CONTACT: James Duffield at (202) 401–0523 or via electronic mail at *jduffield@oce.usda.gov.*

SUPPLEMENTARY INFORMATION:

Purpose

The Office of Energy Policy and New Uses (OEPNU) proposes a new rule to provide administrative provisions for the Biodiesel Fuel Education Program, which was authorized in Sec. 9004 of the Farm Security and Rural Investment Act of 2002 (''2002 Farm Bill'') (7 U.S.C. 8104). The rule describes the policies and procedures OEPNU proposes to apply to this Program. These policies are consistent with those used by other USDA agencies, particularly the Cooperative State Research, Education, and Extension Service (CSREES). The rules are consistent with the basic parameters by which most Federal agencies operate competitive grants programs and will be revised as needed to conform with Federal streamlining efforts.

The goals of the Biodiesel Fuel Education Program are to stimulate biodiesel consumption and to accelerate the development of a biodiesel infrastructure. Increasing biodiesel production will increase the demand for farm commodities, which in turn will raise farm prices and net farm income, and lower government program payments. The development of a biodiesel industry would increase employment and stimulate economic growth in rural areas.

Agencies' Roles

Section 9004 of the 2002 Farm Bill (7 U.S.C. 8104) requires that the Secretary make competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel

fuel use. In the Joint Explanatory Statement of the Committee of Conference accompanying the 2002 Farm Bill, the Managers encouraged the Secretary of Agriculture to utilize the expertise of OEPNU in carrying out the purposes of this section. The Secretary delegated this authority to the Chief Economist, who is implementing this authority through OEPNU. The USDA Farm Bill Implementation Task Force acknowledged that OEPNU would provide technical oversight for the Program and utilize the services of CSREES in administering the Program.

Memorandum of Understanding

OEPNU and CSREES recognize the need for coordination and collaboration between the agencies to carry out the intent of the law. A memorandum of understanding has been signed by each agency which specifies the manner in which OEPNU and CSREES will collaborate in the administration of the Program. OEPNU will utilize the services of CSREES, pursuant to the Economy Act, 31 U.S.C. 1535, to administer the Program grants, as recommended by the Farm Bill Implementation Task Force. The Task Force recommended CSREES because of the Agency's experience conducting education-related grant programs and to take advantage of CSREES staff specialists who are familiar with administering grants.

Role of Oversight Committee

In implementing the Program, OEPNU has formed an oversight committee, including representatives with relevant expertise from the USDA Forest Service, Office of Procurement and Property Management, Agricultural Research Service, Rural Utilities Service, OEPNU, and CSREES and the Department of Energy Office of Biomass. Expertise of committee members includes research, development and demonstration of alternative fuels, production of alternative fuels, and procurement of alternative fuels.

Request for Applications

The committee has recommended guidelines for the Program, which are included in the Notice of Request for Applications published elsewhere in this issue of the **Federal Register**. Awards made pursuant to the Request for Applications for the Biodiesel Fuel Education Program will be made in accordance with the final rule published for this Program, including any changes that may be made in this Proposed Rule as necessary to address public comments submitted in response to this document.

Participating Agencies' Experience and Interaction With Stakeholders

In designing the guidelines for the Program, committee members relied on their past experiences with biodiesel education and outreach. For over a decade, USDA has been involved in biodiesel outreach programs. USDA's Office of Energy Policy and New Uses (OEPNU) coordinates activities related to biodiesel and other renewable fuels for the Department. Since 1993, OEPNU has been involved with producer and consumer stakeholder groups interested in developing a biodiesel industry in the United States. One of the Department's first efforts to bring biodiesel stakeholders together took place in September 1995 when OEPNU and the Department of Energy organized a stakeholder meeting in Washington, DC. The purpose of the meeting was to develop a life cycle inventory of biodiesel. This life cycle inventory furthered knowledge about the benefits of biodiesel. Several groups were represented at the meeting, including biodiesel producers, the oilseed processing industry, the rendering industry, engine manufacturers, state and local governments, and environmental groups.

The Agricultural Research Service (ARS) leads the Department's efforts on biodiesel research and demonstration. Since the summer of 1999, the Beltsville Agricultural Research Center (BARC) has been conducting a biodiesel demonstration project that has become a working model for others interested in using biodiesel. All of the Center's 150 pieces of diesel equipment and trucks were converted to a fuel blend of 20 percent biodiesel and 80 percent petroleum diesel (B20). Vehicles from BARC that run on biodiesel and educational materials have been displayed and distributed throughout the country. In January 2000, ARS conducted a workshop to highlight the BARC biodiesel demonstration project. The workshop's 75 attendees represented a broad range of potential users, including Federal Agencies, such as the Departments of Energy, Defense, Interior, and the U.S. Postal Service. Officials from nearby cities, counties, and states were also in attendance, as well as private industry groups, farmers and biodiesel suppliers. The biodiesel demonstration project has been highlighted at the BARC Public Day, an annual event that provides an opportunity for ARS scientists to describe their research projects to the public.

A biodiesel outreach program has also been established to introduce biodiesel to USDA and other Federal agencies that operate motor fleets. Beginning in July of 2000, USDA's Office of Procurement and Property Management (OPPM) has been conducting a series of informational meetings at various locations around the United States to educate Federal fleet managers and other stakeholders on the benefits of biodiesel. Meetings have been held in Orlando, FL, San Antonio, TX, Minneapolis, MN, Washington, DC, Kansas City, MI, and Salt Lake City, UT. These meetings are used as a platform to educate motor fleet personnel, postal workers and the public about the major advantages of biodiesel. OPPM has also teamed with other entities interested in the environmental and health effects of biodiesel, such as the American Lung Association and the National Biodiesel Board, to conduct biodiesel education meetings for Federal fleet managers, postal workers, and other interested stakeholders.

Proposal Review

In collaboration with external reviewers, the Oversight Committee will review proposals and recommend awards. The Committee will monitor the Program's performance and provide guidance to OEPNU to insure that the Program objectives are being achieved. The Committee will review progress reports submitted by the grantees and, on a yearly basis, recommend whether the awards should be renewed. Also, on a yearly basis, the Committee will recommend whether to reissue the RFA and award new grants.

CSREES will compile application reviews and recommend awards to OEPNU. OEPNU will make award decisions.

Awards

The proposed Program would fund Biodiesel Fuel Education Program grants in each of FYs 2003 through 2007. Because of the scope of this Program and the limited funds available to support it, OEPNU plans to award one or two continuation grants in FY 2003. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded projects in each of FYs 2004 through 2007.

OEPNU's plan to award only one or two continuation grants should facilitate a national education program with a consistent message. It should also ease the implementation process and allow OEPNU to monitor the Program more effectively. If the Agency were to make numerous smaller awards, this could result in multiple education programs with different emphases and goals, as well as competition for program participants and human resources to conduct the Program.

Continuation grants are necessary to ensure that the program follows an orderly and consistent transition from one year to the next over the five-year funding period. A successful Biodiesel Fuel Education Program will be sequential in nature, *i.e.,* conducted in several dependent work phases. For example, phase one might focus on identifying program participants and designing educational tools. Phase 2 might develop a strategy for putting a system and infrastructure in place to reach the targeted audience. Phase 3 could focus on scheduling and travel logistics. The work phases are interdependent, so selecting new grantees each year would cause disruptions and create the potential for repetitive efforts. Authorizing continuation grants will allow the grantees to develop and conduct long-term plans, preserve program continuity, and benefit from learning experiences over the funding period.

The Proposed Rule is divided into subparts. Subpart A contains general information about the Program prescribed by the authorizing legislation, including the purpose of the Program and eligibility restrictions established by the legislation. Subpart A limits indirect costs to the rate that an applicant has negotiated with the cognizant Federal negotiating agency, and explains that there are no matching funds requirements for the Program. Subpart B describes the continuation grant instrument that OEPNU plans to use and outlines objectives for projects funded by the Program. Subpart C provides information about the publication of program announcements, instructs applicants regarding the minimum content requirements for applications, and directs them to the program announcement for specific instructions regarding application requirements and the order of application contents. Subpart C also lists the application submission information that will appear in program announcements and describes the process for acknowledging the receipt of applications. In Subpart D of the rule, the process for selecting reviewers is described, and the evaluation criteria applied to applications are enumerated. Subpart D also contains a discussion of the measures employed by OEPNU to protect against conflicts of interest and safeguard applicant and reviewer confidentiality. General award administration guidelines are outlined in Subpart E. Subpart E also delineates the one-time requirement that applicants submit organizational management information and lists the minimum contents of the award document. The last subpart of the rule, Section F, includes supplementary information. This subpart tells grantees how they can obtain review information, what uses of funds and changes to projects are permissible, where they can find instructions about reporting requirements, and other Federal statutes and regulations that apply to the Biodiesel Fuel Education Program. It describes the process for handling confidential aspects of applications and awards and defines terms that are used elsewhere in the rule.

Paperwork Reduction Act of 1995—Information Collection

OEPNU currently is using the services of CSREES to administer this Program. CSREES obtained information collection approval for the ''Generic Application Kit'' (OMB Approval No. 0524–0039), which encompasses the use of required forms to administer another USDA agency's grant program. Should OEPNU decide to administer this program directly in the future, OEPNU will comply independently with information collection requirements.

Regulatory Flexibility Act

USDA certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–354, as amended (5 U.S.C. 601, *et seq.*) because it is a Federal assistance program, not a regulatory regime, and awards will be made to fewer than ten entities.

Executive Order 12866

This rule has been reviewed under Executive Order 12866 and has been determined to be nonsignificant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this Executive Order. This rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or tribal governments or communities.

Unfunded Mandates Reform Act

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings are required before bringing any judicial action regarding this rule.

Executive Order 13132

In accordance with Executive Order 13132, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies contained in this rule do not have any substantial direct effect on the policymaking discretion of 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. Nor does this rule impose substantial direct compliance costs on State and local governments.

Executive Order 12372

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

Executive Order 13175

The policies contained in this rulemaking do not have tribal implications and thus no further action is required under Executive Order 13175.

List of Subjects in 7 CFR Part 2903

Agricultural commodities, Energy, Fuel, Fuel additives.

For the reasons set forth in the preamble, it is proposed to amend title 7, subtitle B, chapter 29, of the Code of Federal Regulations by adding part 2903 to read as follows:

PART 2903—BIODIESEL FUEL EDUCATION PROGRAM

Subpart A—General Information

Sec.
2903.1 Applicability of regulations.
2903.2 Purpose of the program.
2903.3 Eligibility.
2903.4 Indirect costs.
2903.5 Matching requirements.

Subpart B—Program Description

2903.6 Project types.
2903.7 Project objectives.

Subpart C—Preparation of an Application

2903.8 Program application materials.
2903.9 Content of an application.
2903.10 Submission of an application.
2903.11 Acknowledgment of applications.

Subpart D—Application Review and Evaluation

2903.12 Application review.
2903.13 Evaluation criteria.
2903.14 Conflicts of interest and confidentiality.

Subpart E—Award Administration

2903.15 General.
2903.16 Organizational management information.
2903.17 Award document and notice of award.

Subpart F—Supplementary Information

2903.18 Access to review information.
2903.19 Use of funds; changes.
2903.20 Reporting requirements.
2903.21 Applicable Federal statutes and regulations.
2903.22 Confidential aspects of applications and awards.
2903.23 Definitions.

Authority: 7 U.S.C. 8104; 5 U.S.C. 301.

Subpart A—General Information

§ 2903.1 Applicability of regulations.

(a) The regulations of this part only apply to Biodiesel Fuel Education Program grants awarded under the provisions of section 9004 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (7 U.S.C. 8104) which authorizes the Secretary to award competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use. Eligibility is limited to nonprofit organizations and institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs. The Secretary delegated this authority to the Chief Economist, who in turn delegated this authority to the Director of OEPNU.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 2903.2 Purpose of the program.

The Biodiesel Fuel Education Program seeks to familiarize public and private vehicle fleet operators, other interested entities, and the public, with the benefits of biodiesel, a relatively new fuel option in the United States. It will also address concerns previously identified by fleet operators and other potential users of this alternative fuel, including the need to balance the positive environmental, social and human health impacts of biodiesel utilization with the increased per gallon cost to the user. It is the Program's goal to stimulate biodiesel demand and encourage the further development of a biodiesel industry in the United States.

§ 2903.3 Eligibility.

(a) Eligibility is limited to nonprofit organizations and institutions of higher education that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs.

(b) Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project.

§ 2903.4 Indirect costs.

(a) For the Biodiesel Fuel Education Program, applicants should use the current indirect cost rate negotiated with the cognizant Federal negotiating agency. Indirect costs may not exceed the negotiated rate. If no indirect cost rate has been negotiated, a reasonable dollar amount for indirect costs may be requested, which will be subject to approval by USDA. In the latter case, if a proposal is recommended for funding, an indirect cost rate proposal must be submitted prior to award to support the amount of indirect costs requested.

(b) A proposer may elect not to charge indirect costs and, instead, charge only direct costs to grant funds. Grantees electing this alternative will not be allowed to charge, as direct costs, indirect costs that otherwise would be in the grantee's indirect cost pool under the applicable Office of Management and Budget cost principles. Grantees who request no indirect costs will not be permitted to revise their budgets at a later date to charge indirect costs to grant funds.

§ 2903.5 Matching requirements.

There are no matching funds requirements for the Biodiesel Fuel Education Program and matching resources will not be factored into the review process as evaluation criteria.

Subpart B—Program Description

§ 2903.6 Project types.

OEPNU intends to award continuation grants to successful Biodiesel Fuel Education Program applicants. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued government support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded project(s).

§ 2903.7 Project objectives.

(a) Successful projects will develop practical indicators or milestones to measure their progress towards achieving the following objectives:

(1) Enhance current efforts to collect and disseminate biodiesel information;

(2) Coordinate with other biodiesel educational or promotional programs, and with Federal, State and local programs aimed at encouraging biodiesel use, including the EPAct program;

(3) Create a nationwide networking system that delivers biodiesel information to targeted audiences, including users, distributors and other infrastructure-related personnel;

(4) Identify and document the benefits of biodiesel (*e.g.*, lifecycle costing); and

(5) Gather data pertaining to information gaps and develop strategies to address the gaps.

(b) [Reserved]

Subpart C—Preparation of an Application

§ 2903.8 Program application materials.

OEPNU will publish periodic program announcements to notify potential applicants of the availability of funds for competitive continuation grants. The

program announcement will provide information about obtaining program application materials.

§ 2903.9 Content of an application.

(a) Applications should be prepared following the guidelines and the instructions in the program announcement. At a minimum, applications shall include: A proposal cover page, project summary, project description, information about key personnel, documentation of collaborative arrangements, information about potential conflicts-of-interest, budget forms and a budget narrative, information about current and pending support, and assurance statements.

(b) Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion. Specific instructions regarding additional application content requirements and the ordering of application contents will be included in the program announcement. These will include instructions about paper size, margins, font type and size, line spacing, page numbering, the inclusion of illustrations, and electronic submission.

§ 2903.10 Submission of an application.

The program announcement will provide the deadline date for submitting an application, the number of copies of each application that must be submitted, and the address to which proposals must be submitted.

§ 2903.11 Acknowledgment of applications.

The receipt of all applications will be acknowledged. Applicants who do not receive an acknowledgment within 60 days of the submission deadline should contact the program contact indicated on the program announcement. Once the application has been assigned a proposal number, that number should be cited on all future correspondence.

Subpart D—Application Review and Evaluation

§ 2903.12 Application review.

(a) Reviewers will include government and non-government individuals. All reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, taking into account the following factors:

(1) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities; and

(2) The need to include as reviewers experts from various areas of specialization within relevant scientific, education, or extension fields.

(b) In addition, when selecting non-government reviewers, the following factors will be considered:

(1) The need to include as reviewers other experts (*e.g.*, producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs;

(2) The need to include as reviewers experts from a variety of organizational types (*e.g.*, colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and geographic locations;

(3) The need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution; and

(4) The need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

(c) Authorized departmental officers will compile application reviews and recommend awards to OEPNU. OEPNU will make final award decisions.

§ 2903.13 Evaluation criteria.

(a) The following evaluation criteria will be used in reviewing applications submitted for the Biodiesel Fuel Education Program:

(1) Relevance of proposed project to current and future issues related to the production, use, distribution, fuel quality, and fuel properties of biodiesel, including:

(i) Demonstrated knowledge about markets, state initiatives, impacts on local economies, regulatory issues, standards, and technical issues;

(ii) Demonstrated knowledge about issues associated with developing a biodiesel infrastructure; and

(iii) Quality and extent of stakeholder involvement in planning and accomplishment of program objectives.

(2) Reasonableness of project proposal, including:

(i) Sufficiency of scope and strategies to provide a consistent message in keeping with existing standards and regulations;

(ii) Adequacy of Project Description, suitability and feasibility of methodology to develop and implement program;

(iii) Clarity of objectives, milestones, and indicators of progress;

(iv) Adequacy of plans for reporting, assessing and monitoring results over project's duration; and

(v) Demonstration of feasibility, and probability of success.

(3) Technical quality of proposed project, including:

(i) Suitability and qualifications of key project personnel;

(ii) Institutional experience and competence in providing alternative fuel education, including:

(A) Demonstrated knowledge about programs involved in alternative fuel research and education;

(B) Demonstrated knowledge about other fuels, fuel additives, engine performance, fuel quality and fuel emissions;

(C) Demonstrated knowledge about Federal, State and local programs aimed at encouraging alternative fuel use;

(D) Demonstrated ability in providing educational programs and developing technical programs; and

(E) Demonstrated ability to analyze technical information relevant to the biodiesel industry.

(iii) Adequacy of available or obtainable resources; and

(iv) Quality of plans to administer and maintain the project, including collaborative efforts, evaluation and monitoring efforts.

(b) [Reserved]

§ 2903.14 Conflicts of interest and confidentiality.

(a) During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. Determinations of conflicts of interest will be based on the academic and administrative autonomy of an institution. The program announcement will specify the methodology for determining such autonomy.

(b) Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of reviewers will be made available in such a way that the reviewers cannot be identified with the review of any particular application.

Subpart E—Award Administration

§ 2903.15 General.

Within the limit of funds available for such purpose, the Authorized Departmental Officer (ADO) shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the

procedures set forth in this program. The date specified by the ADO as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by OEPNU under this program shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015 and 3019 of this title).

§ 2903.16 Organizational management information.

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this program, if such information has not been provided previously. Copies of forms recommended for use in fulfilling these requirements will be provided as part of the preaward process.

§ 2903.17 Award document and notice of award.

(a) The award document will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to whom OEPNU has issued an award under this program;

(2) Title of project;

(3) Name(s) and institution(s) of PDs chosen to direct and control approved activities;

(4) Identifying award number assigned by the Department;

(5) Project period;

(6) Total amount of Departmental financial assistance approved by OEPNU during the project period;

(7) Legal authority(ies) under which the award is issued;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

(9) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and

(10) Other information or provisions deemed necessary by OEPNU and the authorized departmental officer to carry out the awarding activities or to accomplish the purpose of a particular award.

(b) [Reserved]

Subpart F—Supplementary Information

§ 2903.18 Access to review information.

Copies of reviews, not including the identity of reviewers, and a summary of the comments will be sent to the applicant PD after the review process has been completed.

§ 2903.19 Use of funds; changes.

(a) Delegation of fiscal responsibility. Unless the terms and conditions of the award state otherwise, the awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of award funds.

(b) Changes in project plans. (1) The permissible changes by the awardee, PD(s), or other key project personnel in the approved project shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the awardee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

(2) Changes in approved goals or objectives shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the awardee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the award.

(5) Changes in project period. The project period may be extended by OEPNU without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the awardee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of award.

(6) Changes in approved budget. Changes in an approved budget must be requested by the awardee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or award.

§ 2903.20 Reporting requirements.

The award document will give instructions regarding the submission of progress reports, including the frequency and required contents of the reports.

§ 2903.21 Applicable Federal statutes and regulations.

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, OMB Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–

133, Audits of States, Local Governments, and Non-profit Organizations. 29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15b (USDA implementation of statute)— prohibiting discrimination based upon physical or mental handicap in Federally assisted programs. 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

§ 2903.22 Confidential aspects of applications and awards.

When an application results in an award, it becomes a part of the record of USDA transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

§ 2903.23 Definitions.

For the purpose of this program, the following definitions are applicable:

Authorized departmental officer or *ADO* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative or *AOR* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Biodiesel means a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials Standard.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Department or *USDA* means the United States Department of Agriculture.

Education activity means an act or process that imparts knowledge or skills through formal or informal training and outreach.

Grant means the award by the Secretary of funds to an eligible recipient for the purpose of conducting the identified project.

Grantee means the organization designated in the award document as the responsible legal entity to which a grant is awarded.

Institution of higher education, as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), means an educational institution in any State that:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

OEPNU means the Office of Energy Policy and New Uses.

Peer review is an evaluation of a proposed project performed by experts with the scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to the program are assessed.

Project director or *PD* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project, also known as a principal investigator for research activities.

Prior approval means written approval evidencing prior consent by an authorized departmental officer (as defined in this section).

Program means the Biodiesel Fuel Education Program as set forth in this part.

Project means the particular activity within the scope of the program supported by a grant award.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

Roger Conway,

Director, Office of Energy Policy and New Uses.

[FR Doc. 03–17851 Filed 7–14–03; 8:45 am]

BILLING CODE 3410–22–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

[Docket No. PRM–34–5]

Amersham Corporation (Now Known as AEA Technology QSA, Inc.); Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–34–5) submitted by Amersham Corporation (now known as AEA Technology QSA, Inc.). The petitioner requested that the NRC amend its regulations that specify performance requirements for industrial radiography equipment by removing the reference to associated equipment, clarifying provisions in the current regulations that the petitioner believes are not clearly defined, and by requiring routine inspection and maintenance of associated equipment.

The NRC reviewed the petitioner's request and concluded that rulemaking is not necessary to achieve the intent of the petitioner's request to remove associated equipment from the sealed source and device (SSD) evaluation and registration process for manufacturers of industrial radiography equipment in 10 CFR 32.210, ''Registration of product information.'' The NRC also explored rulemaking to amend its regulations for self-certification of associated equipment to authorize manufacturers

or industrial radiography licensees to complete the radiation safety evaluation of associated equipment. The NRC obtained risk information that did not clearly support self-certification of associated equipment. The NRC disagreed with the petitioner's point that NRC inappropriately uses American National Standards Institute (ANSI), N432–1980, ''Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography,'' (ANSI N432) as a regulatory checklist when the standard was originally intended to serve as guidance for good manufacturing practices. The NRC determined that its regulations are performance-based in this regard. Section 34.20 allows modification of associated equipment by a licensee or manufacturer unless the replacement component would compromise the design safety features of the system. Finally, § 34.31 requires routine inspection and maintenance of associated equipment. Therefore, additional rulemaking is not warranted.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letter to the petitioner may be examined at the NRC Public Document Room, Public File Area O1F21, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking Web site.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Young, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–5795, e-mail *tfy@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On June 18, 1996 (61 FR 30837), the NRC published a notice of receipt of a petition for rulemaking filed by the Amersham Corporation (now known as AEA Technology QSA, Inc.). The petitioner requested that the NRC amend its regulations in 10 CFR 34.20, ''Performance requirements for industrial radiography equipment,'' by removing the reference to ''associated equipment'' in § 34.20. The petitioner believes that associated equipment should not be subject to the SSD review process. The petitioner argued that the radiation safety evaluation and registration under § 32.210 apply specifically to SSDs and do not apply to other equipment. The petitioner asserted that, for industrial radiography equipment, the NRC expanded its interpretation of § 32.210 to include associated equipment and such an interpretation is not appropriate without rulemaking. The petitioner pointed out that NRC's interpretation, which requires licensees to ensure that associated equipment has been registered under § 32.210, has added unnecessary regulatory burden. Additionally, the petitioner wanted the American National Standards Institute (ANSI), N432–1980, ''Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography,'' (ANSI N432) which is incorporated by reference in § 34.20, to be used as guidance for good manufacturing practices and not as a regulatory approval checklist. The petitioner also requested that § 34.28 be amended to reflect appropriate inspection and maintenance requirements for all of the radiography equipment, including ''associated equipment.'' Finally, the petitioner pointed out that the current version of § 34.20 only requires that the equipment meet the performance standards in ANSI N432 and does not state that this involves regulatory approvals.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on September 30, 1996. NRC received eight comment letters from industry, individuals, and an Agreement State. The majority of the commenters supported the petition. The main reasons cited by these commenters were related to excessive costs in replacing associated equipment that was already fit for use and would not need to be replaced for any other reason. The NRC's interpretation of the rule required licensees to replace unregistered equipment with equipment that had been registered under § 32.210 after prototype testing of the equipment demonstrated that the equipment met the performance requirements in ANSI N432, which is incorporated by reference in § 34.20.

Since the comment period closed, NRC has explored the concept of licensee or manufacturer self-certification of associated equipment with members of industry and counterparts in the Agreement States. The NRC completed the generic assessment and special team inspections published in NUREG–1631, ''Source Disconnects Resulting from Radiography Drive Cable Failures'' (June 1998). An NRC contractor used performance criteria in § 34.20 to complete tests on portable industrial radiography systems described in NUREG/CR–6652, ''Safety Testing of Industrial Radiography Devices,'' (January 2000). An NRC contractor provided a risk assessment to compare regulation of associated equipment under various regulatory approaches. The NRC developed a risk-informed and more performance-based approach for self-certification of associated equipment and asked the Agreement States to evaluate the approach. During the time since the comment period closed, NRC monitored the use of associated equipment via various sources of information, such as inspection reports, event notifications, and enforcement actions.

Reasons for Denial

Over the last several years, NRC has completed several analyses that indicated rulemaking is not necessary to achieve the intent of the petitioner's request; therefore, NRC is denying the petition for the following reasons.

1. Current NRC regulations do not require associated equipment to be registered and the regulations are sufficient to maintain safety. The NRC determined that the practice of registering associated equipment under § 32.210 was not only not required, but was also an unnecessary regulatory burden. Therefore, NRC has discontinued the practice of registering associated equipment and will align NRC's implementation by revising the appropriate guidance and inspection procedure and will issue a regulatory issue summary (RIS) to convey these changes to the regulated community.

2. Although § 34.20(a)(1) states that associated equipment must meet the performance requirements in ANSI N432, § 34.20(b)(3) allows a licensee to modify associated equipment, unless the design of any replacement component would compromise the design safety features of the system. The NRC has dealt with the issue of requiring performance criteria in 10 CFR Part 34 for several decades, as follows.

The Advance Notice of Proposed Rulemaking published March 27, 1978 (43 FR 12718) announced the NRC's intention to complete rulemaking to

improve safety by including radiography equipment performance requirements in the regulations. ANSI N432 was being developed at that time and was issued in 1981. In 1980, an ad hoc Radiography Steering Committee composed of NRC personnel and State officials representing the Conference of Radiation Control Program Directors, Inc., was formed to draft recommendations for improving radiation safety. The steering committee developed recommendations for radiography equipment design safety that were similar to the performance criteria in ANSI N432. Because it appeared that all manufacturers of radiography equipment were not using ANSI N432 nor uniformly or completely implementing the performance criteria, NRC concluded that rulemaking was necessary to ensure that manufacturers would implement ANSI N432 to improve radiation safety for workers. The NRC published the final rule on January 10, 1990; 55 FR 843 that incorporated by reference ANSI N432 into § 34.20. Incorporation by reference is the formal process that allows the NRC to refer to industry standards that are already published elsewhere and that need to be available to afford fairness and uniformity in the administrative process. Incorporation by reference substantially reduced the volume of material to be published in the rule. As referenced in § 34.20, ANSI N432 has the force of law and is treated as if it were published in full in the **Federal Register**.

To maintain safety, a licensee must ensure that prototype testing of all associated equipment (including customized associated equipment) meets the performance requirements of ANSI N432. This requirement prevents substandard associated equipment from being developed by a licensee. Alternatively, under § 34.20(a)(2), a licensee may submit an engineering analysis to NRC for review without repeating a prototype test for similar associated equipment. This performance-based approach is a key factor for denying the petitioner's request regarding the implementation of ANSI N432.

3. At the time of the petitioner's request to amend § 34.28 in 1996, NRC had already proposed rulemaking for routine inspection and maintenance of associated equipment. NRC published the overall revision of 10 CFR part 34 (May 28, 1997; 62 FR 28948) to incorporate § 34.31, ''Inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments,'' that contains performance-based requirements to ensure that associated equipment will function as designed. Currently, § 34.31 requires the licensee to perform visual and operability checks on associated equipment before use on each day that the equipment is to be used to ensure that the equipment is in good working condition. If equipment problems are found, the equipment must be removed from service until repaired. Section 34.31 also requires the licensee to have written procedures for inspection and routine maintenance of associated equipment at intervals not to exceed three months, or before the first use thereafter to ensure the proper functioning of components important to safety. If equipment problems are found, the equipment must be removed from service until repaired. Replacement components must meet design specifications.

NRC obtained risk information for the regulation of associated equipment under § 34.20 and applied the screening considerations in SECY–00–0213, ''Risk-Informed Regulation Implementation Plan'' (October 2000), to determine that the petitioner's request was amenable to a risk-informed approach. An NRC contractor provided risk information that concluded as long as associated equipment is manufactured to meet the performance requirements of a national standard (*i.e.*, ANSI N432), the regulation is sufficient to maintain safety as written.

NRC discontinued the practice of registering associated equipment under § 32.210 to reduce, what NRC determined to be, unnecessary regulatory burden. The NRC will revise the appropriate guidance and inspection procedure and will issue a RIS to replace the existing information notice to align NRC's implementation of § 34.20(a)(1) as follows:

1. As a matter of convenience for manufacturers and their customers, a manufacturer may register associated equipment under the § 32.210 process, but is not required to do so. For example, if a manufacturer's application to register a device also designates the model numbers for associated equipment to be used with the device, then NRC will also indicate the model numbers for the associated equipment in the registration certificate for the device so that the customer understands which model of associated equipment is compatible with the device. For the radiation safety evaluation of a sealed source and device combination under § 32.210(c), all the components of an industrial radiography system must be evaluated together to ensure that there is no interference with the sealed source or the device or degradation of safety for the system over the expected life cycle of the system. A manufacturer may register an entire system comprised of compatible components (including associated equipment) or various sealed source and device combinations (excluding associated equipment). The NRC does not intend to revise current registrations for industrial radiographic equipment to remove references to associated equipment.

2. NRC will revise NUREG–1556, Volume 2, ''Consolidated Guidance about Materials Licensees—Program-Specific Guidance about Industrial Radiography Licenses,'' (Final Report, August 1998) to remove statements that indicate that associated equipment must be specifically approved or registered by NRC or an Agreement State. Instead, the guidance will state that manufacturers or distributors of industrial radiography equipment may voluntarily include items of associated equipment that are compatible with their sealed sources and devices when they are registered. Appendix F contains Information Notice 96–20, ''Demonstration of Associated Equipment Compliance with 10 CFR 34.20,'' (IN–96–20) that will be replaced by a RIS.

3. NRC will revise Inspection Procedure 87121, ''Industrial Radiography Programs'' (December 31, 2002). Currently, the procedure appropriately directs an inspector to examine available associated equipment, interview the workers about inspection and maintenance procedures and awareness that associated equipment needs to comply with § 34.20, and observe work in progress that involves use of associated equipment. An additional statement is needed to prompt an inspector to consider the licensee's equipment modification process to confirm that the design safety features of the system were not compromised by a replacement component of associated equipment that was modified by the licensee (*i.e.*, either the licensee or manufacturer completed prototype testing that demonstrated the component met the performance criteria in ANSI N432 or NRC or an Agreement State has reviewed an engineering analysis of the modification).

4. NRC will issue a RIS to replace IN–96–20 and emphasize a more performance-based approach to make it clear that:

- Manufacturers of industrial radiography equipment may, but are not required to, designate compatible components (including associated equipment) for use with their sealed

sources and devices that are registered under the § 32.210 process;

- Under § 34.20(b)(3), a licensee is allowed to modify associated equipment unless the design of any replacement component would compromise the design safety features of the system;
- A licensee's modification process must account for prototype testing or engineering analysis of a replacement component against the performance criteria required in § 34.20 for any component that was modified for use in licensed activities;
- To comply with § 34.20, a licensee should demonstrate that modifications to associated equipment: (1) Will not create material incompatibility that may degrade a source or device over their expected useful life times; (2) will not diminish the performance of associated equipment in expected use environments over the expected life time of the associated equipment; (3) will not allow a source to inadvertently exit the system; and (4) will not compromise expected safe use of the system; and
- Enforcement action would be considered for a licensee who completes modification of associated equipment that compromises the design safety features of the system. The NRC Enforcement Policy (NUREG–1600) includes an example involving possession or use of unauthorized equipment which degrades safety in the conduct of licensee activities.

The NRC has determined that alignment of the NRC implementation to the existing NRC requirements maintains the same level of compatibility between the Agreement State regulations and the existing NRC requirements. Also, use of revised NRC guidance rather than rulemaking to achieve the petitioner's intent provides Agreement States the flexibility to revise their policy and guidance to meet unique situations and local conditions.

In conclusion, no new information has been provided by the petitioner that calls into question the requirements. Existing NRC regulations provide the basis for reasonable assurance that the common defense and security and public health and safety are adequately protected; therefore, rulemaking does not appear to be warranted.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 9th day of July, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–17846 Filed 7–14–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–26–AD]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE Model G120A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all GROB–WERKE (GROB) Model G120A airplanes. This proposed AD would require you to modify the flight control system operating levers. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this proposed AD are intended to prevent failure of a ball bearing in flight control system operating levers. Such failure could lead to reduced control or loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 18, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–26–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–CE–7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–26–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200; email: *productssupport@grob-aerospace.de.* You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–26–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all GROB Model G120A airplanes. The LBA reports that a damaged ball bearing in a flight control system operating lever was found. The damage was found during regular maintenance. The damage is believed to be caused by incorrect installation.

What Are the Consequences if the Condition Is Not Corrected?

If not corrected, this condition could cause failure of a ball bearing in affected flight control system operating levers. Such failure could result in reduced control or loss of control of the airplane.

Is There Service Information That Applies to This Subject?

GROB has issued Service Letter No. SL1121–009, dated May 23, 2003; Service Bulletin No. MSB1121–033, dated May 8, 2003; and Service Bulletin No. MSB1121–034, dated May 19, 2003.

What Are the Provisions of This Service Information?

GROB Service Bulletin No. MSB1121–033, dated May 8, 2003, includes procedures for inspecting all flight control system operating levers for damaged ball bearings and replacing any lever that has a damaged ball bearing.

GROB Service Bulletin No. MSB–1121–034, dated May 19, 2003, includes procedures for modifying the flight control system operating levers.

GROB Service Letter No. SL1121–009, dated May 23, 2003, includes procedures for modifying elevator rod 1.

What Action Did the LBA Take?

The LBA classified these service bulletins as mandatory and issued German AD Number 2003–164/2, dated May 22, 2003, in order to ensure the continued airworthiness of these airplanes in Germany.

Was This in Accordance With the Bilateral Airworthiness Agreement?

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the LBA has kept FAA informed of the situation described above.

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

What Has FAA Decided?

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other GROB Model G120A airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service information.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

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

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 6 airplanes in the U.S. registry.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish these proposed modifications:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
10 workhours × $60 per hour = $600	No cost for parts	$600	6 × $600 = $3,600

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein 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. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Grob-Werke: Docket No. 2003–CE–26–AD.

(a) *What airplanes are affected by this AD?* This AD affects Model G120A airplanes, all serial numbers, that are certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of a ball bearing in flight control system operating levers. Such failure could lead to reduced control or loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Inspect the flight control system operating levers for damaged ball bearings and replace any lever with a damaged ball bearing.	Inspect within the next 50 hours time-in-service (TIS) after the effective date of this AD Replace prior to further flight after the inspection.	In accordance with GROB Service Bulletin No. MSB1121–033, dated May 8, 2003.
(2) Accomplish the modifications to: ..... (a) elevator rod 1, part number (P/N) 120A–4400.08 or part number 120A–4217 (which supersedes P/N 120A–4400.08); and (b) the flight control system operating levers	Within the next 50 hours TIS after the effective date of this AD.	In accordance with GROB Service Letter No. SL1121–009, dated May 23, 2003, and GROB Service Bulletin No. MSB1121–034, dated May 19, 2003.
(3) Only install flight control system operating levers that have been modified in accordance with paragraph (d)(2)(a) and (d)(2)(b) of this AD.	As of the effective date of this AD	

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200; email: *productssupport@grob-aerospace.de.* You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in German AD 2003–164/2, dated May 22, 2003.

Issued in Kansas City, Missouri, on July 9, 2003.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17818 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–319–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes Equipped With Certain Pratt & Whitney PW306B Engine Nacelles

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Dornier Model 328–300 series airplanes, that would have required performing a check of the airplane maintenance records; inspecting the engine nacelle anti-ice tube for leaks, if necessary; and modifying the joint, if necessary. This new action revises the proposed rule by removing the requirement to perform a records check, which was intended to allow operators to determine whether the inspection would be required. The actions specified by this new proposed AD are intended to prevent an uncommanded engine shutdown in a critical phase of flight due to leakage of air from a loose clamp on the anti-ice tubing joint. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 11, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–319–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-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–319–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from FAIRCHILD Dornier GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–319–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–319–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Dornier Model 328–300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 12, 2003 (68 FR 11762). That NPRM (the ''original NPRM'') would have required performing a check of the airplane maintenance records; inspecting the engine nacelle anti-ice tube for leaks, if the records check indicated that an engine change had been accomplished or maintenance work had been carried out on the nacelle anti-ice system; and modifying the joint, if necessary. The original NPRM was prompted by a report of an in-flight engine shutdown during an airplane rollback due to a P3 air leak from a loose clamp on the anti-ice tubing joint. Such leakage of air, if not corrected, could result in an uncommanded engine shutdown in a critical phase of flight.

Actions Since Issuance of Original NPRM

Since the issuance of the original NPRM, the FAA has determined that the proposed records check may be inadequate to identify airplanes subject to the identified unsafe condition. While it may be possible to determine some of the maintenance history from the maintenance records, a records check cannot definitively determine that certain maintenance work has not been carried out on a particular airplane. Therefore, the FAA has determined that paragraph (a) of the original NPRM must be revised to remove the proposed records check to determine whether certain maintenance had been done. In this supplemental NPRM, paragraph (a) has been removed, paragraph (b) has been revised accordingly, and subsequent paragraphs have been reidentified.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on This Supplemental NPRM

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 AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. In this supplemental NPRM, the office authorized to approve AMOCs is identified in paragraph (c), and Note 1 and paragraph (e) of the original NPRM have been removed.

Cost Impact

The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to do the inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,880, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Fairchild Dornier GMBH (Formerly Dornier Luftfahrt GmbH): Docket 2001–NM–319–AD.

Applicability: Model 328–300 series airplanes equipped with Pratt & Whitney PW306B engine nacelles, from engine nacelle serial number DR0001 up to and including

serial number DR0051, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncommanded engine shutdown in a critical phase of flight due to leakage of air from a loose clamp on the anti-ice tubing joint, accomplish the following:

Inspection

(a) Within 45 days after the effective date of this AD, perform a detailed inspection of the anti-ice tubing in the engine nacelle at the joint between the anti-ice tubing adapter and duct, and also between the joint of the anti-ice shutoff valve and the same duct, to detect any air leakage at the joints, as specified in the Accomplishment Instructions of Dornier Service Bulletin SB–328J–71–107, Revision 1, dated July 4, 2001. If no leakage is detected, no further action is required by this AD.

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.''

Modification

(b) If air leakage is found during the detailed inspection required by paragraph (a) of this AD, before further flight, modify the joint by doing the applicable actions specified in the Accomplishment Instructions of Dornier Service Bulletin SB–328J–71–107, Revision 1, dated July 4, 2001.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in German airworthiness directive 2001–296, dated October 18, 2001.

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

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17817 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–018]

RIN 1625–AA00

Security and Safety Zone; Protection of Large Passenger Vessels, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish regulations for the security and safety of large passenger vessels in the navigable waters of Puget Sound and adjacent waters, Washington. This proposed security and safety zone, when enforced by the Captain of the Port Puget Sound, would provide for the regulation of vessel traffic in the vicinity of large passenger vessels in the navigable waters of the United States.

DATES: Comments and related material must reach the Coast Guard on or before August 14, 2003.

ADDRESSES: You may mail comments and related material to Commanding Officer, Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134. Marine Safety Office Puget Sound maintains the public docket [CGD13–03–018] for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Puget Sound between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT J. Morgan, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217–6232. For specific information concerning enforcement of this rule, call Marine Safety Office Puget Sound at (206) 217–6200 or (800) 688–6664.

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 (CGD13–03–018), 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 that your submission 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

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 Puget Sound 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 separate notice in the **Federal Register**.

Background and Purpose

Hostile entities continue to operate 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)), and (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).

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. On February 8, 2003, the Captain of the Port Puget Sound issued a temporary final rule (TFR) (68 FR 15375, March 31, 2003; CGD13–03–003, 33 CFR 165.T13–002) establishing a large passenger vessel security and safety zone, which expires on August 8, 2003. The Coast Guard, through this action, intends to continue to assist large passenger vessels by establishing a permanent security and safety zone that when enforced by the Captain of the Port would exclude persons and vessels from the immediate vicinity of all large passenger vessels.

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 Proposed Rule

This proposed rule, for security and safety concerns, would control vessel movement in a regulated area surrounding large passenger vessels. As a result of the request for comments in our TFR creating § 165.T13–002 , the Coast Guard received several comments regarding the scope and impact of the TFR. We have considered these comments in drafting this proposed rule. The following is a summary of the comments the Coast Guard received.

One letter voiced concerns that the security and safety zone established in the TFR denied the use of the commercial and recreational facilities at Bell Harbor Marina, Shilshole Bay Marina, Fisherman's Terminal and the Maritime Industrial Center when the security and safety zone was enforced. In both the TFR and this proposed rule, the Coast Guard is attempting to balance adequate security around large passenger vessels against the impacts these security and safety zones have on waterway users. In response to this comment, the Coast Guard has made two changes to this propose rule. First, the definition of Large Passenger Vessel in paragraph (b)(2) of this proposed rule was modified and now excludes small passenger vessels (vessels inspected and certificated under 46 CFR Subchapter T). In other words, the number of vessels with security and safety zones around them will decrease. Second, when a large passenger vessel is moored, the exclusionary zone in this proposed rule will shrink from 100 yards to 25 yards.

The Coast Guard received one comment regarding the ''rules of the road.'' The commenter stated that they believed that the TFR deviated from specific navigation rules, which apply to the ''stand-on'' vessel. The Coast Guard disagrees. Like the TFR, this proposed rule specifically states that the Navigation Rules shall apply at all times within a large passenger vessel security and safety zone. The duties of a stand-on vessel are in part to keep her course and speed. Both the TFR and this proposed rule require vessels operating within the large passenger security and safety zone to operate at the minimum speed necessary to maintain a safe course. Hence, if a vessel is within the large passenger security and safety zone and is a stand-on vessel, the requirements of the navigation rules and this proposed rule are the same—to maintain course and speed unless action to avoid a collision is necessary.

We also received comments in reference to the non-compliance or inability for some vessels without VHF radios to communicate as required with the large passenger vessel master and/or official patrol. The commenters also noted that required communication with large passenger vessels entering and exiting marinas rarely occurred and caused a distraction for the large passenger vessels during critical evolutions. Commenters also stated the required radio communications were unnecessary and would clutter an important working channel. A vessel is only required to contact the large passenger vessel master if it desires to operate within 100 yards of a large passenger vessel that is underway or at anchor. Vessels desiring to operate within 100 yards of a large passenger vessel that is underway or at anchor should first contact the on-scene official patrol. Once moored the exclusionary zone around large passenger vessels will shrink from 100 yards to 25 yards.

Many comments discuss the need for greater public education and awareness efforts. The Coast Guard intends to continue its practice of notifying the public by a variety of means, including Broadcast Notice to Mariners, Local Notice to Mariners, posting on Marine Safety Office Puget Sound's Web site, press releases, and a telephone line manned 24 hours a day to answer questions.

This proposed rule would be enforced from time to time by the Captain of the Port Puget Sound for such time as he deems necessary to prevent damage or injury to any vessel or waterfront facility, to safeguard ports, harbors, territories, or waters of the United States or to secure the observance of the rights and obligations of the United States. The Captain of the Port Puget Sound will cause notice of the activation of this security and safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including Marine Safety Office Puget Sound's Internet web page located at *http://www.uscg.mil/d13/units/msopuget.* In addition, Marine Safety Office Puget Sound maintains a telephone line that is manned 24 hours a day, 7 days a week. The public can contact Marine Safety Office Puget Sound at (206) 217–6200 or (800) 688–6664 to obtain information concerning enforcement of this rule. For the purpose of this regulation, a large passenger vessel means (i) any cruise ship over 100 feet in length carrying passengers for hire, and (ii) any auto ferries and passenger ferries over 100 feet in length carrying passengers for hire such as the Washington State Ferries, M/V COHO and Alaskan Marine Highway Ferries. Large Passenger Vessel does not include vessels inspected and certificated under 46 CFR Subchapter T such as excursion vessels, sight seeing vessels, dinner cruise vessels, and whale watching vessels.

All vessels within 500 yards of a large passenger vessel shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the official patrol. No vessel, except a public vessel as defined in paragraph (b)(7), is allowed within 100 yards of a large passenger vessel that is underway or at anchor, unless authorized by the official patrol or large passenger vessel master. No vessel or person is allowed within 25 yards of a large passenger vessel that is moored. Vessels requesting to pass within 100 yards of a large passenger vessel that is underway or at anchor must contact the official patrol on VHF–FM channel 16 or 13. The on-scene official patrol or large passenger vessel master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of a large passenger vessel that is underway or at anchor in order to ensure a safe passage in accordance with the Navigation Rules. In addition, measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR Part 161 shall take precedence over the regulations in this proposed rule. Similarly, vessels at anchor may be permitted to remain at anchor within 100 yards of passing large passenger vessel. Public vessels for the purpose of this Rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

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).

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.

Although this proposed rule would restrict access to the regulated area, the effect of this proposed rule will not be

significant because: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the official on-scene patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly; (v) the reduction in the number and types of vessels covered by this proposed rule as a result of comments received in response to the Large Passenger Vessel Security Zone TFR; and (vi) the size of the exclusionary zone was reduced from 100 yards to 25 yards for large passenger vessels that are moored.

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.

This proposed rule would 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 large passenger vessels in the navigable waters of the United States.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the official on-scene patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger 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.

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

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of this proposed rule to accommodate the special needs of mariners in the vicinity of large passenger vessels and the Coast Guard's commitment to working with the Tribes, we have determined that passenger vessel security and fishing rights protection need not be incompatible and therefore have determined that this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT.**

Energy Effects

We have analyzed this 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard's preliminary review indicates this proposed rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D. The environmental analysis and Categorical Exclusion Determination will be prepared and be available in the docket for inspection and copying where indicated under **ADDRESSES.** All standard environmental measures remain in effect.

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 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. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1317 to read as follows:

§ 165.1317 Security and Safety Zone; Large Passenger Vessel Protection, Puget Sound and adjacent waters, Washington

(a) *Notice of enforcement or suspension of enforcement.* The large passenger vessel security and safety zone established by this section will be enforced only upon notice by the Captain of the Port Puget Sound. Captain of the Port Puget Sound will cause notice of the enforcement of the large passenger vessel security and safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Puget Sound will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the large passenger vessel security and safety zone is suspended.

(b) *Definitions.* The following definitions apply to this section:

(1) *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.

(2) *Large Passenger Vessel* means any cruise ship over 100 feet in length carrying passengers for hire, and any auto ferries and passenger ferries over 100 feet in length carrying passengers for hire such as the Washington State Ferries, M/V COHO and Alaskan Marine Highway Ferries. Large Passenger Vessel does not include vessels inspected and certificated under 46 CFR chapter I, subchapter T such as excursion vessels, sight seeing vessels, dinner cruise vessels, and whale watching vessels.

(3) *Large Passenger Vessel Security and Safety Zone* is a regulated area of water established by this section, surrounding large passenger vessels for a 500-yard radius to provide for the security and safety of these vessels.

(4) *Navigation Rules* means the Navigation Rules, International-Inland.

(5) *Navigable waters of the United States* means those waters defined as such in 33 CFR Part 2.

(6) *Official Patrol* means those persons designated by the Captain of the Port to monitor a large passenger vessel security and safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels with in the zone and take other actions authorized by the Captain of the Port. Persons authorized in paragraph (l) of this section to enforce this section are designated as the Official Patrol.

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

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

(c) *Security and safety zone.* There is established a large passenger vessel security and safety zone extending for a 500-yard radius around all large passenger vessels located in the navigable waters of the United States in Puget Sound, WA, east of 123°30′ West Longitude. [Datum: NAD 1983]

(d) *Compliance.* The large passenger vessel security and safety zone established by this section remains in effect around large passenger vessels at all times, whether the large passenger vessel is underway, anchored, or moored. Upon notice of enforcement by the Captain of the Port Puget Sound, the Coast Guard will enforce the large passenger vessel security and safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Puget Sound, all persons and vessels are authorized to enter, transit, and exit the large passenger vessel security and safety zone, consistent with the Navigation Rules.

(e) *Navigation Rules.* The Navigation Rules shall apply at all times within a large passenger vessel security and safety zone.

(f) *Restrictions based on distance from large passenger vessel.* When within a large passenger vessel security and safety zone all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 100 yards of a large passenger vessel that is underway or at anchor, unless authorized by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 25 yards of a large passenger vessel that is moored.

(g) *Requesting authorization to operate within 100 yards of large passenger vessel.* To request authorization to operate within 100 yards of a large passenger vessel that is underway or at anchor, contact the on-scene official patrol or large passenger vessel master on VHF–FM channel 16 or 13.

(h) *Maneuver-restricted vessels.* When conditions permit, the on-scene official patrol or large passenger vessel master should:

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

(2) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of an anchored large passenger vessel or within 25 yards of a moored large passenger vessel with minimal delay consistent with security.

(i) *Stationary vessels.* When a large passenger vessel approaches within 100 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it

remains with in the large passenger vessel's security and safety zone unless it is either ordered by, or given permission by the Captain of the Port Puget Sound, his designated representative or the on-scene official patrol to do otherwise.

(j) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from complying with paragraphs (c), (d), (f), (g), (h), and (i), of this section.

(k) *Exception.* 33 CFR part 161 contains Vessel Traffic Service regulations. Measures or directions issued by Vessel Traffic Service Puget Sound pursuant to 33 CFR part 161 will take precedence over the regulations in this section.

(l) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a large passenger vessel, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section 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 section.

(m) *Waiver.* The Captain of the Port Puget Sound may waive any of the requirements of this section for any vessel or class of vessels 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: June 20, 2003.

Danny Ellis,

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

[FR Doc. 03–17723 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–98–4470]

Pipeline Safety: Meeting of the Technical Pipeline Safety Standards Advisory Committee

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Meeting of Gas Technical Advisory Committee.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will convene a meeting of the Technical Pipeline Safety Standards Committee (TPSSC) to discuss and vote on the cost-benefit analysis for the Notice of Proposed Rulemaking, ''Pipeline Integrity Management for Gas Transmission Pipelines in High Consequence Areas'' (68 FR 4278) and discuss and vote on recommended guidance on how to clarify, in the final rule, the process of identifying certain sites as high consequence areas. RSPA/OPS will brief the TPSSC on the Department of Transportation's conceptual framework for a five-year research and development program to ensure the integrity of pipeline facilities as required by Section 12 of the Pipeline Safety Improvement Act of 2002. RSPA/OPS staff will also brief the Committee and request their advice on a possible rulemaking to update the gas pipeline operator personnel qualification regulation.

DATES: The meeting will be held on Thursday, July 31, 2003, from 10 a.m. to 12 Noon. Advisory Committee members will participate via telephone conference call.

ADDRESSES: Members of the public may attend the meeting in room 4236 at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC.

An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Jean Milam, (202) 493–0967, not later than July 18, 2003, on the topic of the statement and the length of the presentation. The presiding officer at the meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: *http://dms.dot.gov.* Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should reference docket number RSPA–98–4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

You may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this document.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jean Milam at (202) 493–0967.

SUPPLEMENTARY INFORMATION: The agenda for this meeting of the TPSSC will include:

1. A vote on the gas integrity management rule cost-benefit analysis.
2. A discussion and vote on recommended guidance on how to clarify, in the final rule, the process of identifying certain sites as high consequence areas.
3. A briefing and request for Committee input on the conceptual framework of our five-year research and development plan.
4. A briefing and request for advice on a possible rule change to the gas pipeline operator qualification regulation.
5. Further discussion and vote on a notice of proposed rulemaking on liquefied natural gas facilities published May 1, 2003 (68 FR 23272).

The TPSSC is a statutorily mandated advisory committee that advises RSPA/OPS on proposed safety standards for gas pipelines. The advisory committee is constituted in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committee consists of 15 members—five each representing

government, industry, and the public. The TPSSC is tasked with determining reasonableness, cost-effectiveness, and practicability of proposed pipeline regulations.

Federal law requires that RSPA/OPS submit cost-benefit analyses and risk assessment information on proposed safety standards to the advisory committees. The TPSSC evaluates the merits of the data and methods used within the analyses and provides recommendations relating to the cost-benefit analyses.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on July 9, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–17722 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 070803B]

Atlantic Highly Migratory Species; Swordfish and Bluefin Tuna Quotas; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: NMFS will hold three public hearings to receive comments from fishery participants and other members of the public regarding two proposed regulations. The first proposed rule, previously published in the **Federal Register** on June 20, 2003, would implement the recommendations from the 2002 meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding North and South Atlantic swordfish. The second proposed rule, previously published in the **Federal Register** on July 10, 2003, would implement the 2003 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established fishing categories, to set General category effort controls, to allocate 25 metric tons of BFT to account for incidental catch of BFT by pelagic longline vessels in the vicinity of the management boundary area, to define the management boundary area and applicable restrictions, and to revise permit requirements to allow General category vessels to participate in registered recreational HMS fishing tournaments and to allow permit applicants a 10–day period to make permit category changes to correct errors. To accommodate people unable to attend a hearing or wishing to provide written comments, NMFS also solicits written comments on these proposed rules.

DATES: The public hearings are scheduled as follows:

1. Tuesday, July 29, 2003–Gloucester, MA 7–9 p.m.
2. Tuesday, July 29, 2003–Madeira Beach, FL 7–9 p.m.
3. Friday, August 1, 2003–Silver Spring, MD 1–3 p.m.

Written comments on the proposed rule regarding swordfish must be received by 5 p.m. on August 4, 2003. Written comments on the proposed rule regarding bluefin tuna must be received on or before August 8, 2003.

ADDRESSES: The locations for the public hearings are as follows:

1. Sawyer Free Library, 2 Dale Ave, Gloucester, MA 01930
2. City Hall, 300 Municipal Drive, Madeira Beach, FL 33708
3. NOAA Science Center, 1301 East-West Highway, Silver Spring, MD 20910

Written comments on the swordfish proposed rule should be sent to: Christopher Rogers, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Written comments on the bluefin tuna proposed rule should be sent to: Brad McHale, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr. Gloucester, MA 01930. Comments also may be sent via facsimile (fax) to 978–281–9340. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Tyson Kade at 301–713–2347 regarding the proposed rule for swordfish or Brad McHale at 978– 281–9260 regarding the proposed rule for bluefin tuna.

SUPPLEMENTARY INFORMATION: The proposed regulations that are the subject of the hearings are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act for the conservation and management of HMS.Complete descriptions of the measures, and the purpose and need for the proposed actions, are contained in the proposed rules and are not repeated here. The swordfish proposed rule published June 20, 2003 (68 FR 36967), and the bluefin tuna proposed rule published July 10, 2003 (68 FR 41103). Copies of the proposed rule may be obtained by writing (*see* **ADDRESSES**) or by calling the listed contact person (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearings

The hearings for each proposed rule will be conducted jointly at the identified locations (*see* **ADDRESSES**). NMFS intends to dedicate half of the hearing time to each rule. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (*e.g.,* alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Special Accommodations

The public hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tyson Kade (*see* **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing or meeting.

Dated: July 9, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–17867 Filed 7–14–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 135

Tuesday, July 15, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Biodiesel Fuel Education Program: Request for Applications and Request for Input

AGENCY: Office of the Chief Economist, Office of Energy Policy and New Uses, USDA.

ACTION: Notice of request for applications.

SUMMARY: The Office of the Chief Economist, Office of Energy Policy and New Uses (OEPNU) requests applications for the Biodiesel Fuel Education Program for fiscal year (FY) 2003 to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use.

DATES: Applications must be received by close of business (COB) on August 14, 2003 (5 p.m. Eastern Daylight Time). Applications received after this deadline will not be considered for funding.

ADDRESSES: The address for hand-delivered applications or applications submitted using an express mail or overnight courier service is: Biodiesel Fuel Education Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 1420, Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024; Telephone: (202) 401–5048.

Applications sent via the U.S. Postal Service must be sent to the following address: Biodiesel Fuel Education Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW.; Washington, DC 20250–2245.

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact Carmela A. Bailey; National Program Leader, Plant and Animal Systems Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, SW., Washington, DC 20250–2220; Telephone: (202) 401–6443; Fax: (202) 401–5179; E-mail: *cbailey@csrees.usda.gov* or James Duffield; Economist; Office of Energy Policy and New Uses; U.S. Department of Agriculture; Telephone: (202) 401–0523; E-mail: *jduffield@oce.usda.gov.*

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under 10.306.

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Part I. General

A. Legislative Authority and Background

Sec. 9004 of the Farm Security and Rural Investment Act of 2002 (FSRIA), 7 U.S.C. 8104, established the Biodiesel Fuel Education Program and requires that the Secretary make competitive grants to eligible entities to educate governmental and private entities that operate vehicle fleets, other interested entities (as determined by the Secretary), and the public about the benefits of biodiesel fuel use. Eligibility is limited to nonprofit organizations and institutions of higher education (as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that have demonstrated both knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs.

The Secretary delegated this authority to the Chief Economist, who in turn delegated this authority to the Director of OEPNU. OEPNU has entered into an Economy Act agreement with CSREES for CSREES assistance in administering this competitive grant program.

B. Purpose and Fund Availability

The Biodiesel Fuel Education Program seeks to familiarise public and private vehicle fleet operators, other interested entities, and the public with the benefits of biodiesel, a relatively new fuel option in the United States. It will also address concerns previously identified by fleet operators and other potential users of this alternative fuel, including the need to balance the positive environmental, social and human health impacts of biodiesel utilization with the increased per gallon cost to the user. It is the Program's goal to stimulate biodiesel demand and encourage the further development of a biodiesel industry in the United States. Like other programs in the Energy Title (Title IX) of the FSRIA, the Biodiesel Fuel Education Program was motivated by a desire to increase our Nation's renewable energy sources and help reduce our dependence on petroleum imports.

Applications should demonstrate the applicant's ability to provide an education/outreach program with a national scope and a consistent message. There is no commitment by USDA to fund any particular application or to make a specific number of awards. Approximately $920,000 is available to fund applications in FY 2003.

C. Eligibility

Eligibility is limited to nonprofit organizations and institutions of higher education that have demonstrated both

knowledge of biodiesel fuel production, use, or distribution and the ability to conduct educational and technical support programs.

Award recipients may subcontract to organizations not eligible to apply provided such organizations are necessary for the conduct of the project.

D. Indirect Costs

For the Biodiesel Fuel Education Program, applicants should use the current indirect cost rate negotiated with the cognizant Federal negotiating agency. Indirect costs may not exceed the negotiated rate. If no indirect cost rate has been negotiated, a reasonable dollar amount for indirect costs may be requested, which will be subject to approval by USDA. In the latter case, if a proposal is recommended for funding, an indirect cost rate proposal must be submitted prior to award to support the amount of indirect costs requested. CSREES will request an indirect cost rate proposal and provide instructions, as necessary.

A proposer may elect not to charge indirect costs and, instead, charge only direct costs to grant funds. Grantees electing this alternative will not be allowed to charge, as direct costs, indirect costs that otherwise would be in the grantee's indirect cost pool under the applicable Office of Management and Budget cost principles. Grantees who request no indirect costs will not be permitted to revise their budgets at a later date to charge indirect costs to grant funds.

E. Matching Requirements

There are no matching funds requirements for the Biodiesel Fuel Education Program and matching resources will not be factored into the review process as evaluation criteria.

F. Types of Applications

The Biodiesel Fuel Education Program is a new program in FY 2003. All applications will be reviewed competitively using the selection process and evaluation criteria described in Part IV—Review Process.

Part II. Program Description

A. Project Types

OEPNU anticipates that $920,000 will be available to fund Biodiesel Fuel Education Program grants in each of FYs 2003 through 2007. In FY 2003, OEPNU plans to award one or two continuation grants for an initial project period of one year. A continuation grant is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined project period with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interest of the Federal government and the public. If these three elements are met, OEPNU plans to provide additional support to the funded project(s) in each of FYs 2004 through 2007.

Project budgets may not exceed $920,000 per year. Project periods may range between three (3) and five (5) years.

B. Program Description

Biodiesel can be made from various agricultural feedstocks, including oil crops like soybeans, canola, and sunflowers, and animal fats, such as lard and tallow, and potentially from wood and wood wastes. Recycled vegetable oils and animal fats, such as yellow grease, are also used to make biodiesel. Biodiesel can be used in most diesel engines with only minor modifications. It can be used as a neat fuel (100 percent) or blended with petroleum diesel in various proportions. The most common blend is B20, a blend of 20 percent biodiesel and 80 percent petroleum diesel. Biodiesel is also used as a fuel additive by blending it with diesel fuel at a low level (5 percent or less), which increases fuel lubricity.

Currently there are a small number of biodiesel producers in the United States. They make biodiesel primarily from soybean oil or yellow grease and usually sell it as B20. Motor vehicle fleets such as school buses, urban buses, and government motor pools are the primary users of B20. The price of B20 varies significantly, depending on differences in feedstock costs and transportation cost, *i.e.,* distance from supplier to the customer. Blending biodiesel with petroleum diesel increases the cost of diesel fuel; however, some fleet operators are encouraged to pay a premium price for B20 by Federal and State program incentives, such as the Energy Policy Act of 1992 (EPAct) (Pub. L. 102–486), that promote alternative fuel use in the United States. The current demand for biodiesel is small; however, it has been increasing in the past few years and an infrastructure for marketing and distributing biodiesel is beginning to emerge.

Biodiesel has many environmental, health and economic benefits. It is biodegradable and reduces air toxics and cancer causing compounds and can be considered to be an environmentally preferable fuel. Burning biodiesel and biodiesel blends reduces most forms of air pollution, including sulfur dioxide (SO_X), carbon monoxide, and particulate matter, however, it increases emissions of nitrogen oxides (NO_X). Because biodiesel is made from renewable sources, significant reductions in carbon dioxide can be realized when the life-cycle (planting, growing, harvesting, and processing) of producing oil crops (*e.g.*, soybeans) is used in comparing B20 to petroleum diesel. Atmospheric carbon dioxide increases are implicated in greenhouse warming, which has become a major concern for world leaders. Renewable fuels like biodiesel also have favorable energy balances compared to non-renewable petroleum fuels. Reducing the demand for petroleum diesel can reduce foreign imports and favorably influence the USA balance of trade. Increasing biodiesel production will increase the demand for farm commodities, which in turn will raise farm prices and net farm income, and lower government program payments. The development of a biodiesel industry would increase employment and stimulate economic growth in rural areas.

The goals of the Biodiesel Fuel Education Program are to stimulate biodiesel consumption and to stimulate the development of a biodiesel infrastructure. Successful projects will develop practical indicators or milestones to measure their progress towards achieving the following objectives:

1. Enhance current efforts to collect and disseminate biodiesel information;
2. Coordinate with other biodiesel educational or promotional programs, and with Federal, State and local programs aimed at encouraging biodiesel use, including the EPAct program;
3. Create a nationwide networking system that delivers biodiesel information to targeted audiences, including users, distributors and other infrastructure-related personnel;
4. Identify and document the benefits of biodiesel (*e.g.,* lifecycle costing); and
5.Gather data pertaining to information gaps and develop strategies to address the gaps.

Part III. Preparation of an Application

A. Program Application Materials

Program application materials are available at the CSREES Funding Opportunities Web site (*http://www.reeusda.gov/1700/funding/ourfund.htm*). If you do not have access to the web page or have trouble downloading material and you would like a hard copy, you may contact the Proposal Services Unit, Competitive Programs, USDA/CSREES at (202) 401–

5048. When calling the Proposal Services Unit, please indicate that you are requesting the RFA and associated application forms for the Biodiesel Fuel Education Program. These materials also may be requested via Internet by sending a message with your name, mailing address (not E-mail) and phone number to *psb@reeusda.gov.* State that you want a copy of the RFA and the associated application forms for the Biodiesel Fuel Education Program.

B. Content of Applications

Applications should be prepared following the guidelines and the instructions below. Each application must contain the following elements in the order indicated:

1. General

Use the following guidelines to prepare an application. Proper preparation of applications will assist reviewers in evaluating the merits of each application in a systematic, consistent fashion:

(a) Prepare the application on only one side of the page using standard size (8½″ x 11″) white paper, one-inch margins, typed or word processed using no type smaller than 12 point font, and single spaced. Use an easily readable font face (*e.g.,* Geneva, Helvetica, Times Roman).

(b) Number each page of the application sequentially, starting with the Project Description, including the budget pages, required forms, and any appendices.

(c) Staple the application in the upper left-hand corner. Do not bind. An original and ten (10) copies (eleven (11) total) must be submitted in one package.

(d) Include original illustrations (photographs, color prints, etc.) in all copies of the application to prevent loss of meaning through poor quality reproduction.

(e) The contents of the application should be assembled in the following order:

(1)Proposal Cover Page (Form CSREES–2002).

(2) Table of Contents.

(3) Project Summary (Form CSREES–2003).

(4) Project Description.

(5) References.

(6) Appendices to Project Description.

(7) Key Personnel.

(8) Collaborative Arrangements (including Letters of Support).

(9) Conflict-of-Interest List (Form CSREES–2007).

(10) Budget (Form CSREES–2004).

(11) Budget Narrative.

(12) Current and Pending Support (Form CSREES–2005).

(13) Compliance with the National Environmental Policy Act (NEPA) (Form CSREES–2006).

(14) Page B, Proposal Cover Page (Form CSREES–2002), Personal Data on Project Director.

2. Proposal Cover Page (Form CSREES–2002)

Page A

Each copy of each grant application must contain a ''Proposal Cover Page'', Form CSREES–2002. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing PDs and the authorized organizational representative (AOR), the individual who possesses the necessary authority to commit the organization's time and other relevant resources to the project. If there are more than three co-PDs for an application, please list additional co-PDs on a separate sheet of paper (with appropriate information and signatures) and attach to the Proposal Cover Page (Form CSREES–2002). Any proposed PD or co-PD whose signature does not appear on Form CSREES–2002 or attached additional sheets will not be listed on any resulting award. Complete both signature blocks located at the bottom of the ''Proposal Cover Page'' form. Please note that Form CSREES–2002 is comprised of two parts—Page A, which is the ''Proposal Cover Page'', and Page B, which is the ''Personal Data on Project Director.''

Form CSREES–2002 serves as a source document for the CSREES grant database; it is therefore important that it be accurately completed in its entirety, especially the E-mail addresses requested in Blocks 4.c. and 18.c. However, the following items are highlighted as having a high potential for errors or misinterpretations:

(a) Type of Performing Organization (Block 6.a. and 6.b.). For Block 6.a., a check should be placed in the appropriate box to identify the type of organization that is the legal recipient named in Block 1. Only one box should be checked. For Block 6.b., please check as many boxes that apply to the affiliation of the PD listed in Block 16.

(b) Title of Proposed Project (Block 7.). The title of the project must be brief (140-character maximum, including spaces), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as ''investigation of,'' ''research on,'' ''education for,'' or ''outreach that'' should not be used.

(c) Program to Which You Are Applying (Block 8). Enter ''Biodiesel Fuel Education Program''.

(d) Type of Request (Block 14.). Check the block for ''New''.

(e) Project Director (PD) (Blocks 16.–19.). Blocks 16.–18. are used to identify the PD and Block 19. to identify co-PDs. If needed, additional co-PDs may be listed on a separate sheet of paper and attached to Form CSREES–2002, the Proposal Cover Page, with the applicable co-PD information and signatures. Listing multiple co-PDs, beyond those required for genuine collaboration, is discouraged.

(f) Other Possible Sponsors (Block 21.). List the names or acronyms of all other public or private sponsors including other agencies within USDA to which your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program contact as soon as practicable. Submitting your application to other potential sponsors will not prejudice its review by OEPNU.

Page B

Page B should be submitted only with the original signature copy of the application and should be placed as the last page of the original copy of the application. This page contains personal data on the PD(s). CSREES requests this information in order to monitor the operation of its review and awards processes. This page will not be duplicated or used during the review process. Please note that failure to submit this information will in no way affect consideration of your application.

3. Table of Contents

For consistency and ease in locating information, each application must contain a detailed Table of Contents immediately following the Proposal Cover Page. The Table of Contents should contain page numbers for each component of the application. Page numbering should begin with the first page of the Project Description.

4. Project Summary (Form CSREES–2003)

The application must contain a ''Project Summary,'' Form CSREES–2003. The summary should be approximately 250 words, contained within the box, placed immediately after the Table of Contents, and not numbered. The names and affiliated organizations of all PDs and co-PDs should be listed on this form, in

addition to the title of the project. The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: overall project goal(s) and supporting objectives; plans to accomplish project goal(s); and relevance of the project to the goals of the Biodiesel Fuel Education Program. The importance of a concise, informative Project Summary cannot be overemphasized. If there are more than three co-PDs for an application, please list additional co-PDs on a separate sheet of paper (with appropriate information) and attach to the Project Summary (Form CSREES–2003).

5. Project Description

Please Note: The Project Description shall not exceed fifteen (15) pages of written text. This maximum has been established to ensure fair and equitable competition. The Project Description must address each of the evaluation criteria identified in Part IV, B., including the following:

(a) Demonstrate ability to conduct educational and technical support programs;

(b) Describe current efforts to collect and disseminate biodiesel information. Explain how the proposed project will enhance these efforts;

(c) Describe plans to coordinate with other biodiesel educational or promotional programs and with Federal, State and local programs aimed at encouraging biodiesel use, including the EPAct program;

(d) Describe plans to create a nationwide networking system that delivers biodiesel information to targeted audiences. Specifically address strategies to reach: (1) Government and private fleet operators; (2) the trucking industry; (3) the marine industry; (4) the agricultural sector; (5) fuel distributors; (6) fuel refiners; (7) the railroad industry; (8) non-fuel users (*e.g.,* furnace manufacturers); (9) engine and engine part manufacturers; and (10) the public;

(e) Describe how the project will identify and document the benefits of biodiesel;

(f) Describe plans to identify information gaps and gather data pertaining to the gaps. Explain how this data will be used to develop strategies that reduce or eliminate the information gaps;

(g) Describe how the project will identify and gather data pertaining to market barriers. Include plans to address questions and concerns related to fuel quality, Nox emissions, cost, lifecycle costing, storage, and engine warrantee coverage;

(h) Identify all practical indicators or milestones that will be used to measure progress towards achieving program objectives (see Part II, B.). Indicators may include, but are not limited to: (1) a targeted audience's level of awareness of biodiesel benefits; (2) Government and/or State motor fleet consumption of biodiesel; (3) the availability of biodiesel information; and (4) the level of public acceptance of biodiesel as a credible fuel and fuel additive;

(i) Describe strategies to involve stakeholders in the planning and accomplishment of program objectives (see Part II, B.); and

(j) Document that necessary institutional resources (administrative, facilities, equipment, and/or materials), and other appropriate resources will be made available to the project. Demonstrate how the institutional resources to be made available to the project, when combined with the support requested from USDA, will be adequate to carry out the activities of the project.

6. References

All references to works cited should be complete, including titles and all co-authors, and should conform to an acceptable journal format. References are not considered in the page-limitation for the Project Description.

7. Appendices to Project Description

Appendices to the Project Description are allowed if they are directly germane to the proposed project. The addition of appendices should not be used to circumvent the page limitation.

8. Key Personnel

The following should be included, as applicable:

(a) The roles and responsibilities of each PD and/or collaborator should be clearly described; and (b) Vitae of the PD and each co-PD, senior associate, and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not OEPNU funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publication listings. The vitae should include a presentation of academic and research credentials, as applicable, *e.g.*, earned degrees, teaching experience, employment history, professional activities, honors and awards, and grants received. A chronological list of all publications in refereed journals during the past four (4) years, including those in press, must be provided for each project member for whom a curriculum vitae is provided. Also list only those non-refereed technical publications that have relevance to the proposed project. All authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

9. Collaborative Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with others, such arrangements should be fully explained and justified. If the consultant(s) or collaborator(s) are known at the time of application, vitae or resume should be provided. In addition, evidence (*e.g.*, letter of support) should be provided that the collaborators involved have agreed to render these services. The applicant also will be required to provide additional information on consultants and collaborators in the budget portion of the application. See instructions in the application forms for completing Form CSREES–2004, Budget.

10. Conflict-of-Interest List (Form CSREES–2007)

A ''Conflict-of-Interest List,'' Form CSREES–2007, must be provided for all individuals who have submitted a vitae in response to item 8.(b) of this part. Each Form CSREES–2007 should list alphabetically, by the last names, the full names of the individuals in the following categories: (a) All co-authors on publications within the past four years, including pending publications and submissions; (b) all collaborators on projects within the past four years, including current and planned collaborations; (c) all thesis or postdoctoral advisees/advisors within the past four years; and (d) all persons in your field with whom you have had a consulting or financial arrangement within the past four years, who stand to gain by seeing the project funded. This form is necessary to assist program staff in excluding from application review those individuals who have conflicts of interest with the personnel in the grant application. The program contact must be informed of any additional conflicts of interest that arise after the application is submitted.

11. Budget

(a) Budget Form (Form CSREES–2004)

Prepare the Budget, Form CSREES–2004, in accordance with instructions provided with the application forms. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested

under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable statutes, regulations, and Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants also must include a budget narrative to justify their budget requests (see section (b) below).

(b) Budget Narrative

All budget categories, with the exception of Indirect Costs, for which support is requested must be individually listed (with costs) in the same order as the budget and justified on a separate sheet of paper and placed immediately behind the Budget form.

12. Current and Pending Support (Form CSREES–2005)

All applications must contain Form CSREES–2005 listing other current public or private support (including in-house support) to which personnel (*i.e.*, individuals submitting a vitae in response to item 8.(b) of this part) identified in the application have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Please follow the instructions provided on this form. Concurrent submission of identical or similar applications to other possible sponsors will not prejudice application review or evaluation by OEPNU. However, an application that duplicates or overlaps substantially with an application already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. Please note that the project being proposed should be included in the Pending section of the form.

13. Certifications

Note that by signing Form CSREES–2002 the applicant is providing the certifications required by 7 CFR Part 3017, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with the application since by signing Form CSREES–2002 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a Form AD–1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, to the grantee organization for retention in their records. This form should not be submitted to USDA.

14. Compliance With the National Environmental Policy Act (NEPA) (Form CSREES–2006)

As outlined in 7 CFR Parts 1b and 3407 (the USDA and CSREES regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES and OEPNU may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES and OEPNU to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–2006, ''NEPA Exclusions Form,'' must be included in the application indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefore. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion(s) must be identified.

Even though a project may fall within the categorical exclusions, CSREES and OEPNU may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

C. Submission of Applications

1. When To Submit (Deadline Date)

Applications must be received by COB on August 14, 2003 (5 p.m. Eastern Time). Applications received after this deadline will not be considered for funding.

2. What To Submit

An original and ten (10) copies of the application must be submitted in one package.

3. Where To Submit

Applicants are strongly encouraged to submit completed applications via overnight mail or delivery service to ensure timely receipt by the USDA. The address for hand-delivered applications or applications submitted using an express mail or overnight courier service is: Biodiesel Fuel Education Program, c/o Proposal Services Unit, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 1420, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024, Telephone: (202) 401–5048.

Applications sent via the U.S. Postal Service must be sent to the following address: Biodiesel Fuel Education Program, c/o Proposal Services Unit, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Avenue, SW., Washington, DC 20250–2245.

D. Acknowledgment of Applications

The receipt of all applications will be acknowledged by E-mail. Therefore, applicants are strongly encouraged to provide accurate E-mail addresses, where designated, on the Form CSREES–2002. If the applicant's E-mail address is not indicated, CSREES will acknowledge receipt of the application by letter.

Applicants who do not receive an acknowledgment within 60 days of the submission deadline should contact the program contact. Once the application has been assigned a proposal number, that number should be cited on all future correspondence.

Part IV. Review Process

A. General

Reviewers will include government and non-government personnel. All reviewers will be selected based upon training and experience in relevant scientific, extension, or education fields, taking into account the following factors: (a) The level of relevant formal scientific, technical education, or extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education, or extension activities; and (b) the need to include as reviewers experts from various areas of specialization within relevant scientific, education, or extension fields.

In addition, when selecting non-government reviewers, the following factors will be considered: (a) The need to include as reviewers other experts (*e.g.*, producers, range or forest managers/operators, and consumers) who can assess relevance of the applications to targeted audiences and to program needs; (b) the need to include as reviewers experts from a variety of organizational types (*e.g.*, colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations) and

geographic locations; (c) the need to maintain a balanced composition of reviewers with regard to minority and female representation and an equitable age distribution; and (d) the need to include reviewers who can judge the effective usefulness to producers and the general public of each application.

CSREES will compile application reviews by the individual reviewers and recommend awards to OEPNU. OEPNU will make final award decisions.

B. Evaluation Criteria

The evaluation criteria below will be used in reviewing applications submitted in response to this RFA:

1. Relevance of proposed project to current and future issues related to the production, use, distribution, fuel quality, and fuel properties of biodiesel, including:

(a) Demonstrated knowledge about markets, state initiatives, impacts on local economies, regulatory issues, standards, and technical issues;

(b) Demonstrated knowledge about issues associated with developing a biodiesel infrastructure; and

(c) Quality and extent of stakeholder involvement in planning and accomplishment of program objectives.

2. Reasonableness of project proposal, including:

(a) Sufficiency of scope and strategies to provide a consistent message in keeping with existing standards and regulations;

(b) Adequacy of Project Description (see Part III, B. 5.) , suitability and feasibility of methodology to develop and implement program;

(c) Clarity of objectives, milestones, and indicators of progress;

(d) Adequacy of plans for reporting, assessing and monitoring results over project's duration; and

(e) Demonstration of feasibility, and probability of success.

1. Technical quality of proposed project, including:

(a) Suitability and qualifications of key project personnel;

(b) Institutional experience and competence in providing alternative fuel education, including:

(1) Demonstrated knowledge about programs involved in alternative fuel research and education;

(2) Demonstrated knowledge about other fuels, fuel additives, engine performance, fuel quality and fuel emissions;

(3) Demonstrated knowledge about Federal, State and local programs aimed at encouraging alternative fuel use;

(4) Demonstrated ability in providing educational programs and developing technical programs; and

(5) Demonstrated ability to analyze technical information relevant to the biodiesel industry.

(a) Adequacy of available or obtainable resources; and

(b) Quality of plans to administer and maintain the project, including collaborative efforts, evaluation and monitoring efforts.

C. Conflicts of Interest and Confidentiality

During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts of interest that may impact review or evaluation. For the purpose of determining conflicts of interest, the academic and administrative autonomy of an institution shall be determined by reference to the current version of the Higher Education Directory, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, VA 22042. Phone: (703) 532–2300. Web site: *http://www.hepinc.com*.

Names of submitting institutions and individuals, as well as application content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of reviewers will be made available in such a way that the reviewers cannot be identified with the review of any particular application.

Part V. Award Administration

A. General

Awards made pursuant to this RFA will be made in accordance with the final rule published for the Biodiesel Fuel Education Program, including any changes that may be made to the Proposed Rule published elsewhere in this issue of the **Federal Register** as necessary to address public comments submitted in response to the Proposed Rule.

Within the limit of funds available for such purpose, the Authorized Departmental Officer (ADO) shall make grants to those responsible, eligible applicants whose applications are judged most meritorious under the procedures set forth in this RFA. The date specified by the ADO as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by OEPNU under this RFA shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (Parts 3015 and 3019 of 7 CFR).

B. Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this RFA, if such information has not been provided previously under a CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (*e.g.*, debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information).

C. Award Document and Notice of Award

The award document will provide pertinent instructions and information including, at a minimum, the following:

1. Legal name and address of performing organization or institution to whom OEPNU has issued an award under the terms of this request for applications;

2. Title of project;

3. Name(s) and institution(s) of PDs chosen to direct and control approved activities;

4. Identifying award number assigned by the Department;

5. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

6. Total amount of Departmental financial assistance approved by OEPNU during the project period;

7. Legal authority(ies) under which the award is issued;

8. Appropriate Catalog of Federal Domestic Assistance (CFDA) number;

9. Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and

10. Other information or provisions deemed necessary by OEPNU and CSREES to carry out the awarding activities or to accomplish the purpose of a particular award.

Part VI. Additional Information

A. Access To Review Information

Copies of reviews, not including the identity of reviewers, and a summary of the comments will be sent to the applicant PD after the review process has been completed.

B. Use of Funds; Changes

1. Delegation of Fiscal Responsibility

Unless the terms and conditions of the award state otherwise, the awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of award funds.

2. Changes in Project Plans

(a) The permissible changes by the awardee, PD(s), or other key project personnel in the approved project shall be limited to changes in methodology, techniques, or other similar aspects of the project to expedite achievement of the project's approved goals. If the awardee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination. The ADO is the signatory of the award document, not the program contact.

(b) Changes in approved goals or objectives shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the awardee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the award.

(e) *Changes in Project Period:* The project period may be extended by OEPNU without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the awardee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of award.

(f) *Changes in Approved Budget:* Changes in an approved budget must be requested by the awardee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or award.

C. Expected Program Outputs and Reporting Requirements

1. Quarterly Progress Reports

Quarterly Progress Reports must be submitted to the USDA program contact person throughout the life of the grant. Generally, the Quarterly Progress Reports should include a summary of overall progress toward project objectives, a description of current problems or unusual developments, plans for the next quarter's activities, and any other information that is pertinent to the ongoing project or which may be specified in the terms and conditions of the award.

2. Current Research Information System (CRIS) Reports

Grant recipients are required to submit annual and summary evaluation reports via the CSREES Current Research Information System (CRIS). CRIS is an electronic, Web-based inventory system that facilitates both grantee submissions of project outcomes and public access to information on Federally funded projects.

D. Applicable Federal Statutes and Regulations

Several Federal statutes and regulations apply to grant applications considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR Part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, OMB Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (sec. 504, Rehabilitation Act of 1973) and 7 CFR Part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Applications and Awards

When an application results in an award, it becomes a part of the record of USDA transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that

does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR Part 3015, subpart V (48 FR 29114, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments. Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0039.

G. Definitions

For the purpose of this program, the following definitions are applicable:

Administrator means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved may be delegated.

Authorized departmental officer or *ADO* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative or *AOR* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Biodiesel means a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials Standard.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Department or *USDA* means the United States Department of Agriculture.

Education activity means an act or process that imparts knowledge or skills through formal or informal training and outreach.

Grant means the award by the Secretary of funds to an eligible recipient for the purpose of conducting the identified project.

Grantee means the organization designated in the award document as the responsible legal entity to which a grant is awarded.

Institution of higher education, as defined in sec. 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), means an educational institution in any State that: (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; (2) is legally authorized within such State to provide a program of education beyond secondary education; (3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree; (4) is a public or other nonprofit institution; and (5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

OEPNU means the Office of Energy Policy and New Uses.

Peer review is an evaluation of a proposed project performed by experts with the scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to the program are assessed.

Project director or *PD* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project, also known as a principal investigator for research activities.

Prior approval means written approval evidencing prior consent by an authorized departmental officer (as defined above).

Program means the Biodiesel Fuel Education Program.

Project means the particular activity within the scope of the program supported by a grant award.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

Done at Washington, DC, this 9th day of July 2003.

Roger Conway,

Director, Office of Energy Policy and New Uses.

[FR Doc. 03–17852 Filed 7–14–03; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. LS–03–06]

Request for an Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension for and revision to a currently approved information collection for the Federal Seed Act Labeling and Enforcement.

DATES: Comments received by September 15, 2003 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054–2193; telephone (704) 810–8871, fax (704) 852–4189.

SUPPLEMENTARY INFORMATION:

Title: Federal Seed Act Program.

OMB Number: 0581–0026.

Expiration Date of Approval: March 31, 2004.

Type of Request: Extension and revision of currently approved information collection.

Abstract: This information collection and recordkeeping requirements are necessary to conduct the FSA (7 U.S.C. 1551, *et seq.*) program with respect to certain testing, labeling, and recordkeeping requirements of agricultural and vegetable seeds in interstate commerce.

The FSA, Title II, is a truth-in-labeling law that regulates agricultural and vegetable planting seed in interstate

commerce. Seed subject to the FSA must be labeled with certain quality information and it requires that information to be truthful. The Act prohibits the interstate shipment of falsely advertised seed and seed containing noxious-weed seeds that are prohibited from sale in the State into which the seed is being shipped.

Besides providing farmers and other seed buyers with information necessary to make an informed choice and protect the buyer from buying mislabeled seed, the FSA promotes fair competition within the seed industry. It also encourages uniformity in labeling, aiding the movement of seed between the States. Because seed moving in interstate commerce must be labeled according to the FSA, most State laws have seed labeling requirements similar to those of the FSA, causing more uniformity of State laws.

Although anyone can submit a complaint to the SRTB, the FSA is primarily enforced through cooperative agreements with the States. State seed inspectors inspect and sample seed where it is being sold. They send a sample of the seed and a copy of the labeling to the State seed laboratory where the sample is tested and the analysis compared with the label. When violations are found, State personnel may take corrective action such as issuing a stop sale order to keep the seed from being sold until it is correctly labeled or otherwise disposed of. They may also take action against the shipper or labeler of the seed. The action a State may take against a shipper in another State is limited. Therefore, violations involving interstate shipments may be turned over to AMS for Federal action.

AMS investigates the complaints. The investigation normally involves check testing the State's official sample and possibly the shipper's file sample at the Testing Section. The shipper's records are checked to establish that there was a violation of the FSA, responsibility for the violation, and the cause of the mislabeling, if possible. The investigation will help the shipper find and correct the problem causing the violation and help AMS to determine the appropriate regulatory action. Regulatory action is to take no action if the investigation finds the FSA was not violated, a letter of warning for less serious violations, or a monetary settlement for more serious violations.

No unique forms are required for this information collection. The FSA requires seed in interstate commerce to be tested and labeled. Once in a State, seed must comply with the testing and labeling requirements of the State seed law. The same test and labeling required by the FSA nearly always satisfies the State's testing and labeling requirements. Also the receiving, sales, cleaning, testing, and labeling records required by the FSA, are records that the shipper would normally keep in good business practice.

The information obtained under this information collection is the minimum information necessary to effectively carry out the enforcement of the FSA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.13 hours per response.

Respondents: Interstate shippers and labelers of seed.

Estimated Number of Respondents: 2,679.

Estimated Number of Responses per Respondents: 6.42.

Estimated Total Annual Burden on Respondents: 36,602.

Comments Are Invited On: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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 may be sent to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, LS, AMS, USDA, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054–2193 or E-mail to *richard.payne2@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–17800 Filed 7–14–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. LS–03–07]

Request for an Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection for the Seed Service Testing Program.

DATES: Comments received by September 15, 2003 will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Richard C. Payne, Chief, Seed Regulatory and Testing Branch (SRTB), Livestock and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054–2193; telephone (704) 810–8871 and Fax number (704) 852–4189.

SUPPLEMENTARY INFORMATION:

Title: Seed Service Testing Program.

OMB Number: 0581–0140.

Expiration Date of Approval: May 31, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: This information collection is necessary to conduct voluntary seed testing on a fee for service basis. The Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.* authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered.

The purpose of the voluntary program is to promote efficient, orderly marketing of seeds, and assist in the development of new and expanding markets. Under the program, samples of agricultural and vegetable seeds submitted to AMS are tested for factors such as purity and germination at the request of the applicant for the service. In addition, grain samples, submitted at the applicant's request, by the Grain Inspection, Packers, and Stockyards Administration are examined for the presence of certain weed and crop seed.

A Federal Seed Analysis Certificate is issued giving the test results. Most of the seed tested under this program is scheduled for export. Many importing countries require a Federal Seed analysis Certificate on U.S. seed.

The only information collected is information needed to provide the service requested by the applicant. This includes information to identify the seed being tested, the seed treatment (if treated with a pesticide), the tests to be performed, and any other appropriate information required by the applicant to be on the Federal Seed Analysis Certificate.

The number of seed companies applying for the seed testing service has increased from 65 to 82 during the past 3 years due to an increase in the number of companies exporting seed. The total number of samples received for testing has increased also. Therefore, the average burden for information collection has remained about the same for seed companies applying for the service.

The information in this collection is used only by authorized AMS employees to track, test, and report results to the applicant.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: Applicants for seed testing service.

Estimated Number of Respondents: 82.

Estimated Number of Responses per Respondent: 24.3.

Estimated Total Annual Burden on Respondents: 498.5 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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 may be sent to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, LS, AMS, USDA, 801 Summit Crossing Place, Suite C, Gastonia, North Carolina 28054–2193 or by E-mail to *richard.payne2@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–17801 Filed 7–14–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Southeast Geographic Area Rangeland Allotment Management Plans on Some National Forest System Lands on the Buffalo Gap National Grassland in South Dakota

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement in conjunction with the revision of allotment management plans.

SUMMARY: Revise Rangeland Allotment Management Plans (RAMP) for all allotments within the Fall River Southeast Geographic Area (FRSEGA) and the Fox Allotment whose boundary lies within the Fall River West Geographic Area (FRWGA), and analyze continuation of grazing within the constraints of the Revised Nebraska Land and Resource Management Plan (NLRMP).

DATES: Comments concerning the scope of the analysis must be received within 30 days after publication in the **Federal Register**. The draft environmental impact statement is expected August 2003 and the final environmental impact statement is expected October 2003.

ADDRESSES: Send written comments to: Mike Erk, Interdisciplinary Team Leader, USDA Forest Service, PO Box 732, 1801 Highway 18 By-pass, Hot Springs, SD 57747.

FOR FURTHER INFORMATION CONTACT: Mike Erk, Interdisciplinary Team Leader, USDA Forest Service, PO Box 732, 1801 Highway 18 By-pass, Hot Springs, SD 75547. Phone (605) 745–4107

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The purpose of the EIS is to determine current conditions, analyze environmental consequences of actions to these conditions, and assist the decision maker in selecting management/monitoring strategies consistent with meeting desired condition sin the NLRMP. The need for the action is to reverse undesirable conditions, and ensure that authorized uses and associated management activities move them towards desired NLRMP conditions.

Proposed Action: The Fall River Ranger District proposes to implement best management practices and activities with adaptive management and monitoring strategies to ensure there are no disparities between current conditions and NLRMP desired conditions.

Possible Alternatives: No-Action Alternative is to not change current permitted uses. No-Use alternative is to eliminate any uses on the project area.

Responsible Official: Michael E. McNeill, District Ranger, Fall River Ranger District, PO Box 732, 1801 Highway 18 By-pass, Hot Springs, SD 57747.

Nature Of Decision To Be Made: The decision to be made is whether or not to continue permitted uses within the project area. If uses are permitted, then adaptive management strategies and monitoring will be identified to ensure compliance with desired NLRMP conditions.

Scoping Process: The agency sent a letter to interested parties on April 30, 2003 requesting comments concerning the scope of the analysis. Comments were due by May 20, 2003.

Release and Review of the Draft Environmental Impact Statement: The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by August 2003. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register.** The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

Reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Com.* v. *NRDC.* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and Wisconsin.

Heritages, Inc., v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis 1980). Because of these court rulings, it is very important that those interested in this proposed

action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be a specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 1, 2003.

Michael E. McNeill,

District Ranger.

[FR Doc. 03–17850 Filed 7–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Fastener Quality Act Requirements.

Form Number(s): None.

OMB Approval Number: 0693–0015.

Type of Review: Regular submission.

Burden Hours: 21.5.

Number of Respondents: 2.

Average Hours Per Response: 1.5 hours per accreditation body and 20 hours per petitioner.

Needs and Uses: The National Institute of Standards and Technology (NIST), a component of the Technology Administration reporting to the Under Secretary for Technology, under the Fastener Quality Act (the Act) (Pub. L. 101–592 amended by Pub. L. 104–113, Pub. L. 105–234 and Pub. L. 106–34) is required to accept an affirmation from laboratory accreditation bodies and quality system registrar accreditation bodies. The affirmation must meet the applicable International Organization for Standardization/International Electro-technical Commission (ISO/IEC) Guide (ISO/IEC Guide 58 for laboratory accreditors and ISO/IEC Guide 61 for registrar accreditors). An organization having made such an affirmation to NIST may accredit either fastener testing laboratories or quality system registrars for fastener manufacturers in accordance with the applicable provisions of the Fastener Quality Act. NIST will solicit information declarations from U.S. and foreign private accreditation bodies. The information collected will enable NIST to compile a list of accreditation bodies able to provide accreditations meeting all the requirements of the Act and of the procedures, 15 CFR part 280.

Section 10 of the Act requires NIST to accept petitions from persons publishing a document setting forth guidance or requirements providing equal or greater rigor and reliability compared to ISO/IEC Guide 25, ISO/IEC Guide 58, ISO/IEC Guide 61, or ISO/IEC Guide 62. Petitions to consider a document as an alternative to one of the ISO/IEC guides may be accepted by the Director of NIST for use provided the document provides equal or greater rigor and reliability as compared to the ISO/IEC guide.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jacqueline Zeiher, (202) 395–4638.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jacqueline Zeiher, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 9, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–17780 Filed 7–14–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Secretarial Oil and Gas Business Development Mission to Russia

AGENCY: Department of Commerce.

ACTION: Notice to announce Secretary Evans—Oil and Gas Business Development Mission to Russia, September 21–25, 2003.

SUMMARY: Secretary of Commerce Donald L. Evans will lead a senior-level business development mission to St. Petersburg and Moscow, Russia from September 21–25, 2003. The focus of the mission will be to assist U.S. businesses to explore trade and investment opportunities in the oil and gas sector including exploration and production, equipment and services, and transportation. The delegation will include approximately 15 U.S. based senior executives of small, medium and large sized U.S. firms. The mission will reaffirm U.S. Government support of U.S.-Russian cooperation in the energy sector and seek to expand opportunities for U.S. companies. Members will participate in the U.S.-Russia Commercial Energy Summit in St. Petersburg on September 22–23, and will participate in additional meetings in Moscow on September 24–25.

DATES: Applications should be submitted to the Office of Business Liaison by August 8, 2003. Applications received after that date will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Office of Business Liaison; Room 5062; Department of Commerce; Washington, DC 20230; Tel: (202) 482–1360; Fax: (202) 482–4054.

SUPPLEMENTARY INFORMATION:

Secretarial Oil and Gas Business Development Mission to Russia

September 21–25, 2003

I. Description of the Mission

Secretary of Commerce Donald L. Evans will lead a senior-level business development mission to St. Petersburg and Moscow, Russia from September 21–25, 2003. The focus of the mission will be to assist U.S. businesses to explore trade and investment opportunities in the oil and gas sector including exploration and production,

equipment and services, and transportation. The delegation will include approximately 15 U.S. based senior executives of small, medium and large sized U.S. firms. The mission will reaffirm U.S. Government support of U.S.-Russian cooperation in the energy sector and seek to expand opportunities for U.S. companies. Members will participate in the U.S.-Russia Commercial Energy Summit in St. Petersburg on September 22–23, and will participate in additional meetings in Moscow on September 24–25.

II. Commercial Setting for the Mission

The U.S. has become increasingly engaged with Russia on energy issues. At the Presidential Summit in May 2002, Presidents Bush and Putin announced a new Energy Dialogue, with the goals of increasing global energy supply and security, and promoting U.S.-Russian cooperation in developing energy resources. The first event of the new Dialogue was the U.S.-Russia Commercial Energy Summit, in October 2002 in Houston, Texas. This historic Summit brought together top officials and executives from the U.S. and Russian governments and energy industries. It was chaired by the U.S. Secretaries of Commerce and Energy, and the Russian Ministers of Energy and Economic Development and Trade. Together, they agreed to strengthen energy cooperation between the U.S. and Russia by working towards the common goals of diversifying energy supplies, improving the investment environment, expanding commercial partnerships, and developing resources in an environmentally responsible way. They also agreed to form the U.S.-Russia Commercial Energy Dialogue (CED). The CED consists of U.S. and Russian energy companies, and provides a forum for discussing issues affecting the U.S.-Russia commercial energy relationship. The CED has had regular meetings since the Commercial Energy Summit, and will submit a report outlining ways to promote more U.S.-Russian energy cooperation at the Second Commercial Energy Summit, scheduled for September 22–23 in St. Petersburg, Russia.

Oil and Gas Equipment and Services

Russia is currently the fifth largest export market for U.S.-made oil and gas field equipment. In 2002, U.S. exports of oil and gas field machinery to Russia totaled $328 million, an increase of 16 percent from 2001. High oil prices, which allowed Russian oil companies to invest in new and existing oil fields, new pipeline construction, and major loans to Russian oil companies from the U.S. Export-Import Bank and the European Bank for Reconstruction and Development account for much of this increase.

Because Russia's mature oil production base has been exploited for decades, efforts to offset production declines and to increase oil recovery factors have led to excellent prospects for U.S. exports, especially those targeted at oilfield rehabilitation and enhanced oil recovery technology. There are also a number of new projects planned for previously undeveloped regions such as Timan Pechora, East Siberia, and the Russian Far East. The huge oil fields offshore Sakhalin Island in the Russian Far East, which are being developed by several international consortia, present enormous opportunities for U.S. equipment suppliers. The consortia are expected to invest a total of $30–45 billion over the 30-year life cycles of these projects. Investment in energy-related infrastructure such as pipelines, ports, and processing facilities is also planned.

Oil and Gas Exploration and Production

In 2003, Russia remains the world's top energy producer, when production of both oil and natural gas is considered on an oil equivalent basis. This year, Russia could produce as much as 8.0 million barrels of oil and natural gas liquids per day (bpd) and 610 billion cubic meters (bcm) of natural gas. These figures represent a dramatic recovery in the oil and gas sector since 1996 when oil production had dropped to only 6.04 million bpd and in 1997, when gas production was 575 bcm. The Russian government expects oil and gas production to continue to increase over the next decade as oil companies discover new fields and rehabilitate old ones.

To date, U.S. companies have played a fairly limited role in developing Russia's massive oil and gas resources. U.S. companies' involvement ranges from several small joint ventures to the massive Sakhalin-I project in the Russian Far East.

Oil and Gas Transportation

Russia's oil exports have been steadily increasing since 1995. In 2003, Russia will export about 5.5 million bpd of crude oil and refined oil products, based on industry projections. The Russian government and Russian energy industry have stated that they intend to increase oil and gas exports, and to find new markets in addition to Europe, where the demand for oil and gas is expected to remain relatively flat. This will require new export infrastructure including pipelines and oil and gas terminals. Currently, consideration is being given to building an oil terminal at the warm-water port of Murmansk; a 2450-kilometer pipeline from Angarsk (East Siberia) to Daqing in northeastern China; and an LNG plant on Sakhalin for gas exports to the Far East.

III. Goals for the Mission

The mission aims to further U.S. commercial policy objectives and to advance specific U.S. business interests. The mission will:

- Assess the commercial climate and export and investment opportunities in Russia;
- Advance specific U.S. business interests of the mission members by introducing them to key host government decision-making officials and to potential clients and business partners;
- Assist new-to-market firms to gain a foothold in Russia and increase the visibility of U.S. companies already operating in Russia in this very competitive market;
- Support U.S. Government efforts to eliminate market access problems encountered by U.S. firms in Russia;
- Encourage continued progress in economic reforms in Russia;
- Promote U.S.-Russian energy cooperation.

IV. Scenario for the Mission

The Business Development Mission will provide participants with exposure to high level contacts and access to the Russian market. American Embassy officials and local U.S. businesses will provide a detailed briefing on the economic, commercial and political climate, and current export and investment opportunities. Meetings will be arranged with appropriate government ministers and other senior level government officials. In addition, private meetings will be scheduled with potential business partners. Networking events will also be organized to provide opportunities to meet Russian business and government representatives. Secretary Evans will meet with his trade counterparts and other senior government officials to encourage support for U.S. companies in Russia's energy sector.

Mission members will participate in the U.S.-Russia Commercial Energy Summit in St. Petersburg, which will allow them to meet senior energy sector officials and industry leaders. They will also travel to Moscow for additional meetings with senior Russian government officials, as well as for one-on-one sales and business partnership opportunities.

The tentative trip itinerary will be as follows:

September 21: Arrive in St. Petersburg
September 22: Commercial Energy Summit in St. Petersburg
September 23: Commercial Energy Summit in St. Petersburg; travel to Moscow
September 24: Meetings in Moscow
September 25: Meetings in Moscow; depart Moscow

V. Criteria for Participant Selection

The recruitment and selection of private sector participants for this mission will be conducted according to the ''Statement of Policy Governing Department of Commerce-Overseas Trade Missions'' established in March 1997. Approximately 15 companies will be selected for the mission. Companies will be selected according to the criteria set out below.

Eligibility

Participating companies must be incorporated in the United States. A company is eligible to participate if the products and/or services that it will promote (a) are manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service.

Selection Criteria

Companies will be selected for participation in the mission on the basis of:

- Consistency of company's goals with the scope and desired outcome of the mission;
- Relevance of a company's business and product line to the identified growth sectors;
- Rank of the designated company representative;
- Past, present, or prospective relevant international business activity;
- Diversity of company size, type, location, demographics, and traditional under-representation in business.
- Timely receipt of signed mission application, participation agreement, and participation fee.

Recruitment will begin immediately and will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade missions calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet websites, press releases to the general and trade media. Promotion of the mission will also take place through the involvement of U.S. Export Assistance Centers and relevant trade associations.

An applicant's partisan, political activities (including political contributions) are entirely irrelevant to the selection process.

VI. Time Frame for Applications

Applications for the Russia Business Development mission will be made available on or about July 3, 2003. The fee to participate in this mission has not yet been determined, but will be approximately $8,000–$10,000. The fees will not cover travel or lodging expenses, which will be the responsibility of each participant. For additional information on the trade mission or to obtain an application, contact the Office of Business Liaison at 202–482–1360. Applications should be submitted to the Office of Business Liaison by August 8, 2003, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit. A mission website will be posted at *http://www.commerce.com/russiamission2003* to share information as it becomes available.

Contact: Office of Business Liaison, Room 5062, Department of Commerce, Washington, DC 20230, Tel: (202) 482–1360, Fax: (202) 482–4054,&fnl;*http://www.commerce.com/russiamission.*

Dated: July 9, 2003.

Dan McCardell,

Director, Office of Business Liaison.

[FR Doc. 03–17807 Filed 7–14–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Open Meeting

The President's Export Council subcommittee on Export Administration (PECSEA) will meet on July 31, 2003, 10 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Agenda

1. Welcome by Under Secretary of Commerce for Industry and Security.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Bureau of Industry and Security (BIS) and Export Administration update.
5. Export Enforcement update.
6. Discussion of issues.
7. Closing remarks.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, BIS/EA/OSIES MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on 202–482–2583.

Dated: July 9, 2003.

James J. Jochum,

Assistant Secretary for Export Administration.

[FR Doc. 03–17804 Filed 7–14–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Information

SUMMARY: In furtherance of its implementation of the new U.S. Commercial Remote Sensing Policy authorized by the President on April 25, 2003, the National Oceanic and Atmospheric Administration (NOAA) is seeking public comment with regard to NOAA's licensing of commercial remote sensing satellite systems.

DATES: Submit comments on or before August 15, 2003.

ADDRESSES: Submit written comments to: NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway SSMC1, Room 7311, Silver Spring, MD 20910, attn: Timothy Stryker, Chief, Satellite Activities Branch.

SUPPLEMENTARY INFORMATION: The new U.S. Commercial Remote Sensing Policy establishes guidance and implementation actions for the policies

contained therein with respect to commercial remote sensing space capabilities. A fact sheet regarding the new policy directive may be found on the web site of the White House Office of Science and Technology Policy, at *http://www.ostp.gov/html/new.html.* The fundamental goal of the policy is ''to advance and protect U.S. national security and foreign policy interests by maintaining the nation's leadership in remote sensing space activities, and by sustaining and enhancing the U.S. remote sensing industry.''

As part of the implementation of the new policy, the National Oceanic and Atmospheric Administration (NOAA) is seeking public comment on all aspects of its licensing program for commercial remote sensing satellite systems. NOAA is seeking comments on topics such as:

- the current regulations on commercial remote sensing satellite systems;
- the current thresholds for commercial operations of U.S. systems;
- the U.S. Government's manner of conditioning operations of U.S. system operators;
- issues of foreign availability and competition; and,
- possible alternative approaches to address U.S. national security, foreign policy, and commercial interests.

For public reference, the Land Remote Sensing Policy Act of 1992, the Licensing of Private Land Remote-Sensing Space Systems (15 CFR part 960), and other relevant materials may be found in the ''Reference Materials'' section on the NOAA Commercial Remote Sensing Licensing Web site, at *http://www.licensing.noaa.gov.* Comments should be received by NOAA no later than August 15, 2003, by postal service to the address listed above.

FOR FURTHER INFORMATION CONTACT: Timothy Stryker, NOAA/NESDIS International and Interagency Affairs, 1335 East West Highway, Room 7311, Silver Spring, Maryland 20910; telephone (301) 713–2024 x.205, fax (301) 713–2032, e-mail *Timothy.Stryker@noaa.gov,* or Bernard Crawford at telephone (301) 713–2024 x204, e-mail *Bernard.Crawford@noaa.gov.*

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 03–17808 Filed 7–14–03; 8:45 am]

BILLING CODE 3510–HR–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Amendments to the Live Cattle Futures Contract Restricting Delivery to Cattle Born and Raised in the United States

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability for public comment of the proposed amendments to the Chicago Mercantile Exchange's live cattle futures contract restricting delivery to cattle born and raised in the United States.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has requested that the Commission approve the subject proposed amendments for the live cattle futures contract. The proposals were submitted pursuant to the provisions of Section 5c(c)(2) of the Commodity Exchange Act (Act) and Commission Regulation 405.5. The proposals will require that all cattle delivered on the futures contract must be born and raised exclusively in the United States, and the seller must provide supporting documentation that conforms to industry standards at the time of delivery. The amendments are contingent upon the promulgation by the United States Department of Agriculture (USDA) of regulations implementing Country Of Origin Labeling (COOL) requirements pursuant to Section 10816 of Public Law 107–171 (the Farm Security and Rural Investment Act of 2002), which by statute is intended to take effect on September 30, 2004.

The Director of the Division of Market Oversight (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the Exchange's proposed amendments for comment is in the public interest, and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before July 30, 2003.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to (202) 418–5521 or by electronic mail to *secretary@cftc.gov.* Reference should be made to ''CME Live Cattle Amendments.''

FOR FURTHER INFORMATION CONTACT: Please contact Martin G. Murray of the Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418–5276. Facsimile number: (202) 418–5527. Electronic mail: *mmurray@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The CME's live cattle futures contract calls for delivery at par of 40,000 pounds of live steers at specified CME-approved livestock yards in Texas, Kansas, Nebraska, Oklahoma, and New Mexico.[1] Under current contract terms, there is no country of origin requirement.

The proposed amendments will require that all cattle delivered on the futures contract must be born and raised exclusively in the United States, and the seller must provide supporting documentation that conforms to industry standards at the time of delivery. The amendments are contingent upon the promulgation by the USDA of final regulations implementing the COOL provisions (Section 10816 of Public Law 107–171), which by statute is intended to take effect on September 30, 2004. The Exchange intends to implement the amendments with respect to all newly listed futures contract months beginning with the October 2004 contract month.[2]

In support of the proposed amendments, the Exchange states the following:

> [T]hese amendments are based on input from the Exchange's Ad Hoc Live Cattle Advisory Group, which includes a cross-section of industry representatives. This Group was convened on Monday, June 2nd specifically to discuss the implications associated with the impending adoption of COOL regulations. The Group agreed that the Live Cattle contract delivery specifications should be modified to require that all delivered cattle must be born and raised exclusively in the United States. Further, the seller (short) must provide documentation that conforms to industry standards at the time of delivery, verifying country of origin information. Finally, a contingency clause has been adopted in the event that COOL is postponed or repealed.

The Division is requesting comment on the proposals. The Division is particularly interested in comments assessing the potential impact of the proposals on available deliverable supplies for the live cattle futures contract and the consequential effects

[1] At the buyer's option, cattle may be graded on a live basis at the delivery stockyard, or on a carcass basis at a CME-approved packaging plant located within the originating stockyard's delivery region.

[2] The Exchange intends to list the October 2004 futures contract month on September 2, 2003.

on the susceptibility of the futures contract to manipulation.

The Division notes that the COOL provisions, which the USDA is charged with implementing and enforcing, require country of origin labeling by specified large retailers of fresh beef (muscle cuts and ground beef).[3] The labeling must identify the country (or countries) of origin in which the cattle was born, raised, and slaughtered. The COOL provisions also define the criteria for a covered commodity such as beef to be labeled as ''U.S. Country of Origin.'' To receive this label, beef must be derived exclusively from animals born, raised, and slaughtered in the United States.[4] The COOL provisions also require any person supplying beef to a retailer to provide information to the retailer indicating the country of origin of the cattle. The provisions further provide USDA with the authority to require persons in the distribution chain to maintain a verifiable recordkeeping audit trail to verify compliance. The USDA must issue final regulations implementing the COOL provisions by September 30, 2004, when the labeling requirement takes effect.

Copies of the Exchange's proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Copies of the proposed amendments can also be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the request for approval may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations there under (17 CFR Part 145 (2000)), except to the extent they are entitled to confidential treatment as set forth in 7 CFR 145.5 and 145.9 Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments pertaining to the proposed amendments or with respect to other materials submitted by the CME should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC on July 9, 2003.

Michael Gorham,

Director, Division of Market Oversight.

[FR Doc. 03–17819 Filed 7–14–03; 8:45 am]

BILLING CODE 6351–01–M

[3] The legislation also requires country of origin labeling for other specified commodities, including pork, lamb, fish, shellfish, fresh and frozen fruits and vegetables, and peanuts.

[4] There is an exception for beef from cattle born and raised in Alaska or Hawaii and transported through Canada for not longer than 60 days before slaughter in the United States.

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Ground-Based Midcourse Defense Extended Test Range Final Environmental Impact Statement

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Missile Defense Agency's Ground-Based Midcourse Defense (GMD) Extended Test Range Final Environmental Impact Statement (FEIS), that analyzes the potential for environmental impacts associated with establishing an extended test range capability providing more realistic operational flight testing capability in support of development of the GMD element of the Ballistic Missile Defense System (BMDS). The current capability includes missile launch sites and array of sensors and other test equipment located at the Ronald Reagan Ballistic Missile Test Site (RTS) at Kwajalein Atoll, the Pacific Missile Range Facility (PMRF) in Hawaii, and Vandenberg Air Force Base (AFB) in California.

A Record of Decision will be issued no earlier than 30 days from the date this notice appears in the **Federal Register**.

DATES: Consideration will be given to all comments provided on or before August 14, 2003.

ADDRESSES: Requests for copies of the document or to provide comments on the FEIS should be addressed to: U.S. Army Space and Missile Defense Command, ATTN: SMDC–EN–V (Mrs. Julia Hudson-Elliott), P.O. Box 1500, Huntsville, AL 35805, by e-mail at *gmdetreis@smdc.army.mil,* or by phone at 1–800–823–8823.

FOR FURTHER INFORMATION CONTACT: Please call Mr. Rick Lehner, MDA Director of Communications at (703) 697–8997.

SUPPLEMENTARY INFORMATION: The Missile Defense Agency (MDA) and the Federal Aviation Administration (FAA) (cooperating agency) announced the availability of the Ground-Based Midcourse Defense Extended Test Range Draft Environmental Impact Statement (DEIS) on February 7, 2003 (68 FR 26 6420) providing notice that the DEIS was available for comment. The DEIS public review period was from February 7, 2003 through April 15, 2003. Public hearings were held February 24 through March 6, 2003. Comments from the DEIS review and public hearings have been considered and included along with responses in the FEIS.

The proposed action and alternatives examined in the FEIS include development of the capability for single and dual launches of interceptor and target missiles at the Kodiak Launch Complex (KLC) Alaska, RTS, and/or Vandenberg AFB, with intercepts over the Pacific Ocean. Development of these capabilities would entail construction of two interceptor launchers, one additional target launch pad and construction/alteration of launch support facilities at KLC; target pad modifications at RTS; modification of support facilities at Vandenberg AFB; construction of In-Flight Interceptor Communication System (IFICS) Data Terminals and military and commercial satellite communications in the mid-Pacific and at KLC or Vandenberg AFB; additional range instrumentation (tracking and range safety radars) in the vicinity of sites; and use of either existing Battle Management Command and Control (BMC2) facilities at RTS, or new BMC2 facilities that may be developed at Forth Greely, Alaska and/or Shriever AFB, or Cheyenne Mountain Complex, Colorado, in the validation of the GMD operational concept effort.

Additionally, the proposed action and alternatives include the construction and operation of a Sea-Based Test X-Band Radar (SBX) that would operate in the Pacific broad ocean area and would be home-based in either Alaska, California, Washington, RTS, or Hawaii.

Copies of the FEIS have been distributed to Federal, State, and local agencies; public officials; and organizations and individuals that previously requested copies of the DEIS or FEIS. Copies of the FEIS will be available at the following public libraries:

- Anchorage Municipal Library, 3600 Denali St., Anchorage, AK 99503
- Everett Library, 2702 Hoyt Ave., Everett, WA 98201
- Kodiak City Library, 319 Lower Mill Bay Rd., Kodiak, AK 99615
- Lompoc Public Library, 501 E. North Ave., Lompoc, CA 93436
- Mountain View Branch Library, 150 S. Bragaw St., Anchorage, AK 99508

• Oxnard Public Library, 251 S. A St., Oxnard, CA 93030
• Valdez City Library, 212 Fairbanks, Valdez, AK 99686
• Hawaii State Library, Hawaii Documents Center, 478 South King St., Honolulu, HI 96813
• University of Hawaii at Manoa, Hamilton Library, 2550 The Mall, Honolulu, HI 96822
• Hanapepe Public Library, 4490 Kona Rd., Hanapepe, HI 96716
• Kapaa Public Library, 1464 Kuhio Highway, Kapaa, HI 96746
• Koloa Public & School Library, 3451 Poipu Rd., Koloa, HI 96756
• Lihue Public Library, 4344 Hardy St., Lihue, HI 96766
• Princeville Public Library, 4343 Emmalani Drive, Princeville, HI 96722
• Waimea Public Library, 9750 Kaumualii Highway, Waimea, HI 96796
• Ray D. Prueter Library, 510 Park Ave., Port Hueneme, CA 93041

The library locations and the FEIS are also available on the MDA Internet site: *www.acq.osd.mil/bmdo/bmdolink/html/bmdolink.html*

Dated: July 11, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–17956 Filed 7–11–03; 1:53 pm]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Business Practice Implementation Board (DBB) will meet in open session on July 30, 2003. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Acquisition, Human Resources, Financial Management, and General Management related task groups will deliberate on their findings and proposed recommendations related to tasks assigned earlier this year. Additional task groups may deliberate on proposed recommendations.

DATES: Wednesday, July 30, 2003, 0830 to 1030 hrs.

ADDRESSES: The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The DBB may be contacted at: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Room 2E314, Washington, DC 20301–1100, via E-mail at *DBB@osd.pentagon.mil,* or via phone at (703) 695–0505.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact the Defense Business Practices Implementation Board no later than Wednesday, July 23 for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also requested to be scheduled, and submit a written text of the comments by Friday, July 18 to allow time for distribution to the Board members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty-minutes.

Dated: July 8, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–17778 Filed 7–14–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice; change in meeting dates.

SUMMARY: The Defense Policy Board Advisory Committee announced a closed meeting in the **Federal Register** on Thursday, June 26, 2003 (68 FR 38103). The Committee as scheduled to meet at the Pentagon on July 14, 2003 from 0900 to 2100 and July 15, 2003 from 0900 to 1200. The Committee will not meet at the Pentagon on July 28, 2003 from 0900 to 2100 and July 29, 2003 from 0900 to 1700.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice or major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: July 9, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–17779 Filed 7–14–03; 8:45 am]

BILLING CODE 5000–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Sensera, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Sensera, Inc., a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-Owned inventions described in U.S. Patent No. 5,372,930 issued December 13, 1994, entitled ''Sensor for Ultra-Low Concentration Molecular Recognition'', Navy Case No. 73,568; U.S. Patent No. 5,807,758 issued September 15, 1998, entitled ''Chemical and Biological Sensor Using an Ultra-Sensitive Force Transducer'', Navy Case No. 76,628; U.S. Patent No. 6,180,418 issued January 30, 2001, entitled ''Force Discrimination Assay'', Navy Case No. 78,183; and U.S. Patent Application Serial No. 09/614,727 filed July 12, 2000, entitled ''Nanoporous Membrane Immunosensor'', Navy Case No. 80,068.

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than July 30, 2003.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: July 9, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–17809 Filed 7–14–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 14, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 9, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants Under the Developing Hispanic-Serving Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 70.

Burden Hours: 5,600.

Abstract: This information is required of institutions of higher education designated eligible to apply for grants as Hispanic-Serving Institutions under Title V, Part A of the Higher Education Act of 1965, as amended. This information will be used in the evaluation process to determine whether proposed activities are consistent with legislated activities and to determine the dollar share of the Congressional appropriation to be awarded to successful applicants.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2307. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–17803 Filed 7–14–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 15, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including

through the use of information technology.

Dated: July 10, 2003.

Joseph Schubart,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Chief Information Officer

Type of Review: Extension.

Title: Master Plan for Customer Surveys and Focus Groups.

Frequency: One time.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100,000.

Burden Hours: 50,600.

Abstract: Customer satisfaction surveys and focus group discussions will be conducted by the Principal Offices of the Department of Education to measure customer satisfaction and establish and improve customer service standards as required by Executive Order 12862.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2308. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–17853 Filed 7–14–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.*; interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than July 25, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: July 31–August 2, 2003.

Times:

July 31:

Committee Meetings:

Assessment Development Committee: Closed Session—12 p.m. to 3 p.m.;

Ad Hoc Committee on Background Questions: Open Session—3:30 p.m. to 5 p.m.;

Executive Committee: Open Session—5 p.m. to 6 p.m.; Closed Session 6 p.m. to 7 p.m.

August 1:

Full Board: Open Session—8:30 a.m. to 10 a.m.

Committee Meetings:

Assessment Development Committee: Closed Session—10 a.m. to 10:30 a.m.; Open Session—10:30 a.m. to 12 p.m.;

Committee on Standards, Design and Methodology: Open Session—10 a.m. to 12 p.m.;

Reporting and Dissemination Committee: Open Session—10 a.m. to 12 p.m.;

Full Board: Closed Session—12 p.m. to 1:30 p.m.; Open Session—1:30 p.m. to 4:15 p.m.

August 2:

Full Board: Open Session—8:30 a.m. to 12 p.m.

Location: Ritz-Carlton Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, D.C., 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

On July 31, the Assessment Development Committee will meet in closed session from 12 p.m. to 3 p.m. to review secure test items for the National Assessment of Educational Progress (NAEP) 2005 Science Assessment. The meeting must be conducted in closed session as disclosure of proposed test items from the 2005 NAEP Science Assessment would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Executive Committee will meet in open session on July 31, from 5 p.m. to 6 p.m. The committee will then meet in closed session from 6 p.m. to 7 p.m. for two purposes. First, the committee will discuss independent government cost estimates for contracts related to the National Assessment of Educational Progress (NAEP). This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program. The discussion of this information would be likely to significantly impeded implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

Second, in the closed session, the Executive Committee will discuss a personnel action pertaining to nomination of the Board Vice Chair. This discussion pertains solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

On August 1, the full Board will meet in open session from 8:30 a.m. to 10 a.m. The Board will approve the agenda, hear the executive Director's report. and receive an update on the work of the

National Center for Education Statistics (NCES) from the Associate Commissioner of NCES, Val Plisko.

From 10 a.m. to 12 p.m. on August 1, the Board's standing committees—the Assessment Development Committee; the Committee on Standards, Design, and Methodology; and the Reporting and Dissemination Committee—will meet in open session, with one exception. The Assessment Development Committee will meet in closed session on August 1 from 10 a.m. to 10:30 a.m. to receive a briefing on the 2002 NAEP Oral Reading Grade Four Special Study results. The meeting must be conducted in closed session because results of the Oral Reading Study have not been released to the public; premature disclosure of the information would significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in closed session on August 1, 2003 from 12 p.m. to 1:30 p.m. to receive results of the 2003 NAEP Reading and Mathematics Assessments. This session must be closed because the results of the Reading and Mathematics Assessments are under development and have not been released to the public Premature disclosure of the information would significantly frustrate implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on August 1 from 1:30 p.m.–4:15 p.m. The Board will receive an update on the 2007 Reading Framework Project at 1:30 p.m. followed by a presentation by former Vice Board Chair Michael Nettles from 2:45 p.m. to 3:35 p.m. This presentation will be followed by a report from the Ad Hoc Committee on State Sampling, after which the August 1 session of the board meeting will adjourn.

The full Board will meet in open session from 8:30 a.m. to 12 p.m. on August 2. The Board will review video clips on recent NAEP releases from 8:30 a.m. to 9 a.m., followed by a report on NAEP Special Studies/Technology Based Assessments from 9 a.m. to 9:30 a.m. The Board will then receive an update on the work of the NAEP 12th Grade Commission from 9:30 a.m. to 10 a.m. Board actions on policies and Committee reports are scheduled to take place between 10 a.m. and 12 p.m., when the August 2, 2003 session of the board meeting will adjourn.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: July 10, 2003.

Charles E. Smith,

Executive Director, National Assessment Governing Board.

[FR Doc. 03–17868 Filed 7–14–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1523–078, et al.]

New England Independent System Operator, Inc. et al.; Electric Rate and Corporate Filings

July 8, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket Nos. ER97–1523–078, OA97–470–070, and ER97–4234–068]

Take notice that on July 2, 2003, the New York Independent System Operator, Inc. (NYISO) filed a compliance report describing the steps it intends to take to ensure that Thunderstorm Alert-related costs are directly assigned to load serving entities in the New York City area.

The NYISO states that copies of this filing have been mailed to all parties listed on the official service lists in Docket Nos. ER97–1523–076, OA97–470–068, and ER97–4234–066 and to all market participants that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or its Market Administration and Control Area Services Tariff, and to the electric utility regulatory agencies in New York, New Jersey, and Pennsylvania.

Comment Date: July 23, 2003.

2. Lowell Cogeneration Company, Limited Partnership

[Docket No. ER97–2414–005]

Take notice that on July 1, 2003, Lowell Cogeneration Company Limited Partnership (LCCLP) tendered for filing its triennial market power analyses.

Comment Date: July 22, 2003.

3. ISO New England Inc.

[Docket No. ER02–2153–004]

Take notice that on July 1, 2003, ISO New England Inc. submitted a compliance report in this proceeding.

ISO New England Inc., states that copies of said filing have been served upon all parties to this proceeding and the New England utility regulatory agencies, and electronically upon the New England Power Pool participants.

Comment Date: July 22, 2003.

4. Illinova Energy Partners, Inc.

[Docket No. ER03–1000–000]

Take notice that on June 27, 2003, Illinovia Energy Partners, Inc., (IEP) pursuant to Commission's Regulations, 18 CFR 35.15, submitted a Notice of Cancellation of IEP's Market-Based FERC Electric Rate Tariff and all rate schedules and/or service agreements thereunder effective June 30, 2003.

Comment Date: July 18, 2003.

5. PacifiCorp

[Docket No. ER03–1005–000]

Take Notice that on June 30, 2003, PacifiCorp tendered for filing Amendatory Agreement No. 1 (Amendatory Agreement No. 1) to the 1997 Pacific Northwest Coordination Agreement (the 1997 PNCA).

PacifiCorp states that Amendatory Agreement No. 1 amends the 1997 PNCA. PacifiCorp also states that a copy of the filing was served upon the parties to the 1997 PNCA.

Comment Date: July 21, 2003.

6. SmartEnergy, Inc.

[Docket No. ER03–1006–000]

Take notice that on June 30, 2003, SmartEnergy, Inc., (SmartEnergy) tendered for filing a Notice of Cancellation of FERC Rate Schedule No. 1. SmartEnergy states that it has made a decision to cease energy operations.

Comment Date: July 21, 2003.

7. Midwest Energy, Inc.

[Docket No. ER03–1007–000]

Take notice that on June 30, 2003, Midwest Energy, Inc. (Midwest) submitted for filing an Electric Interconnection Contract (Contract) between Midwest and Centel Corporation, now known as Aquila Networks-WPK (Aquila) along with an

Amendment No. 1 which provides for the addition of one point of interconnection.

Midwest states that a copy of this filing was served upon the Kansas Corporation Commission and Aquila.

Comment Date: July 21, 2003.

8. Midwest Energy, Inc.

[Docket No. ER03–1008–000]

Take notice that on June 30, 2003, Midwest Energy, Inc. (Midwest) submitted for filing an Electric Interconnection Contract (Contract) between Central Kansas Power Company, Inc., now known as Midwest Energy, Inc. and Westar Energy (Westar). This Interconnection Contract was previously filed by Westar Energy and designated as FPC No. 123 as revised and amended.

Midwest states that a copy of this filing was served upon the Kansas Corporation Commission and Westar.

Comment Date: July 21, 2003.

9. American Transmission Systems, Inc.

[Docket No. ER03–1009–000]

Take notice that on June 30, 2003, American Transmission Systems, Inc. (ATSI) tendered for filing its Service Agreement No. 337, an executed Network Integration Transmission Service Agreement with Buckeye Power, Inc. (Buckeye) under ATSI's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1. ATSI requests that the agreement be placed in effect on July 1, 2003.

ATSI states that copies of the filing were served upon Buckeye and the Public Utilities Commission of Ohio.

Comment Date: July 21, 2003.

10. NEO California Power LLC

[Docket No. ER03–1010–000]

Take notice that on July 1, 2003, NEO California Power LLC (NEO California) filed with the Federal Energy Regulatory Commission a Must-Run Service Agreement dated June 30, 2003 with the California Independent System Operator Corporation.

Comment Date: July 22, 2003.

11. Southern California Edison Company

[Docket No. ER03–1011–000]

Take notice that on July 1, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) to the Agreement For Interconnection Service and the Interconnection Facilities Agreement between SCE and Harbor Cogeneration Company (Harbor), Service Agreement Nos. 2 and 9 under SCE's FERC Electric Tariff, First Revised Volume No. 6. SCE respectfully requests an effective date of June 30, 2003.

SCE states that the Revised Sheets to these agreements reflect an extension of their terms and conditions to provide interconnection service to Harbor's 110 MW generating facility through August 31, 2003. SCE also states that copies of this filing were served upon the Public Utilities Commission of the State of California and Harbor.

Comment Date: July 22, 2003.

12. RAM Energy Products, L.L.C.

[Docket No. ER03–1012–000]

Take notice that on July 1, 2003, RAM Energy Products, L.L.C. submitted for filing, pursuant to Section 205 of the Federal Power Act, and part 35 of the Commission's regulations, an application for authorization to make sales, as a power marketer, of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; and to resell firm transmission rights.

Comment Date: July 22, 2003.

13. New England Power Pool

[Docket No. ER03–1014–000]

Take notice that on July 1, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include El Cap II, LLC (El Cap), Split Rock Energy, LLC (Split Rock), and New Hampshire Industries, Inc., (NHI). The Participants Committee requests an effective date of July 1, 2003, for the commencement of participation in NEPOOL by El Cap and Split Rock, and September 1, 2003 for the commencement of participation in NEPOOL as a Governance Only Member by NHI.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: July 22, 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. 03–17848 Filed 7–14–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0296; FRL–7318–4]

Pesticides; Data Submitter Rights for Data Submitted in Support of Tolerance Actions; Notice of Availability; Extension of Comment Period

AGENCY: Evironmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On April 17, 2003, EPA announced the availability for comment on a proposal discussing a program to enable the Agency to appropriately implement the new provisions contained in section 408(i) of the Federal Food, Drug, and Cosmetic Act (FFDCA) to address exclusive use and compensation rights for data submitted to EPA in support of tolerance and tolerance exemption actions. The Agency received a request to extend the comment period and this notice announces the extension of the comment period for 60 days.

DATES: Comments, identified by the docket ID number OPP–2002–0296, must be received on or before September 16, 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: Cameo G. Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5454; fax number: (703) 308–5884; e-mail address: *smoot.cameo@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you submit data to EPA in support of establishing, maintaining or exempting tolerances for pesticides under the FFDCA, or are a pesticide registrant or a person applying for pesticide registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected entities may include, but are not limited to:

- Pesticide manufacturing (NAICS code 32532) e.g., individuals or entities engaged in activities related to the registration of a pesticide product.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 152 Pesticide Registration and Classification Procedures and section 408(i) of the FFDCA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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 ID number OPP–2002–0296. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties, or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2002–0296. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2002–0296. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2002–0296.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2002–0296. Such deliveries are only accepted

during the docket's normal hours of operation as identified in Unit I.A.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action Is EPA Taking?

This document extends the public comment period established in the **Federal Register** issued on April 17, 2003 (68 FR 18977) (FRL–7279–9). In that document, EPA sought comment on a proposal for implementing a data compensation program under FFDCA. EPA is hereby extending the comment period, which was set to end on July 16, 2003, to September 16, 2003.

III. What Is the Agency's Authority for Taking This Action?

As part of the Food Quality Protection Act of (FQPA) 1996, Congress amended the FFDCA to address exclusive use and compensation rights for data submitted to EPA in support of tolerance and tolerance exemption actions, and to amend treatment of confidential information under the statute. This proposal addresses the implementation of the statutory requirement.

Lists of Subjects

Environmental protection, Pesticides, Tolerance, and Data compensation.

Dated: July 7, 2003.

Jim Jones,

Director, Office of Pesticide Programs.

[FR Doc. 03–17901 Filed 7–14–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–2057]

ITFS, MDS, and MMDS Pending Applications

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission's (FCC's) Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau dismisses applications where the applicants did not respond to an October 18, 2002 public notice requiring applicants to affirm their interest in those applications. The public notice also dismisses legal matters relating to applications that are being dismissed in the public notice.

FOR FURTHER INFORMATION CONTACT: For questions relating to legal matters dismissed as a result of this public notice, please contact John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division at 202–418–0797. For all other questions relating to this Public Notice, contact Mary Shultz, Branch Chief, or Ruth Taylor, Chief, Microwave Section, Licensing and Technical Analysis Branch at 717–338–2646.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Public Notice, DA 03–2057, released on June 20, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. On October 18, 2002, the Wireless Telecommunications Bureau (WTB) released a Public Notice (October Public Notice), 67 FR 69010, November 14, 2002, in which it sought to ensure that it had a complete and accurate listing of all licenses and pending applications in the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS). The Public Notice referenced six different tables of licensing information. Specifically, Table E listed all pending applications for ITFS and Table F listed all pending applications for MDS and MMDS. Tables E and F contained the following information for each pending application: licensee name, file number, application purpose, call sign, facility ID, transmitter city/state, BTA and channel. The WTB required that all ITFS, MDS and MMDS licensees and applicants review and verify the information contained in these tables. For pending applications filed prior to March 25, 2002, the WTB required that the applicant respond in writing by December 18, 2002 if continued processing was desired. The time for licensees and applicants in these services to respond to the October Public Notice was extended to February 3, 2003. This deadline was further extended to February 21, 2003.

2. Appendix A to this Public Notice contains a list of those pending ITFS applications with a filing date prior to March 25, 2002 where the applicant/licensee has not responded to the October Public Notice. Appendix B to this Public Notice contains a list of those pending MDS and MMDS applications for with a filing date prior to March 25, 2002 where the applicant/licensee has not responded to the October Public Notice. In the October Public Notice, WTB indicated, ''For any applications for which written affirmations requesting further processing have not been received, those applications will be dismissed without prejudice.'' Accordingly, it is ordered, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and §§ 21.28(d) and 73.3568(a)(1) of the Commission's Rules, 47 CFR 21.28(d), 73.3568(a)(1), the applications listed in Appendix A and Appendix B to this Public Notice are hereby dismissed without prejudice.

3. In addition, as a result of the dismissal of the applications listed in Appendices A and B, certain legal matters are now moot. Those legal matters consist of petitions to deny or petitions for reconsideration filed with respect to those applications, or complaints filed with respect to licenses that have now expired or been forfeited because of the dismissal of renewal applications for those licenses. Since the underlying applications have now

been dismissed, there is no need to address the related legal matters. Accordingly, it is ordered, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and §§ 21.28(d) and 73.3568(a)(1) of the Commission's rules, 47 CFR 21.28(d), 73.3568(a)(1), the pending legal matters listed in Appendix C to this Public Notice are hereby dismissed with prejudice.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

ITFS APPLICATIONS BEING DISMISSED

Licensee name	File No.	Purp	Call sign	Fac ID	Transmitter city/state	BTA	Channel list
AGAPE CHRIST SCHOOL OF NEW COVENANT.	BPIF–19920228DF	P	NEW	606	MALDEN, MO		GG
ALAMOGORDO PUBLIC SCHOOL.	BPIF–19951017AD	P	NEW	79457	ALAMOGORD, NM.		AG
ALAMOGORDO PUBLIC SCHOOL.	BPIF–19951017AE	P	NEW	79465	DEMING, NM		CG
ALBA HIGH	BMPIF–19950914KV	MP	WNC634	826	BUCKS, AL		AG
ALBION COMMUNITY DEVELOPMENT CORP.	BALIF–20010214AAE	AL	WLX584	875	BUFFALO, NY		A1 A2
ALBION COMMUNITY DEVELOPMENT CORP.	BMAIF–20000818ARV	MP	WLX584	875	BUFFALO, NY		A1 A2
ALBION COMMUNITY DEVELOPMENT CORP.	BPIF–19930128DF	P	NEW	878	DEERFIELD, NY		BG
ALBION COMMUNITY DEVELOPMENT CORP.	BRIF–20020304AAX	R	WLX583	879	BROWNSVILLE, VT.		AG
ALTO INDEPEND SCHOOL DISTRICT.	BLMPIF–20011012AAE	LMP	WLX431	1184	KOSSMUTH, TX		C1
AMARILLO INDEPENDENT SCHOOL DISTIRCT.	BPIF–19910722DE	P	NEW	1232	AMARILLO, TX		AG
AMARILLO INDEPENDENT SCHOOL DISTRICT.	BPIF–19910722DD	P	NEW	1233	AMARILLO, TX		BG
AMERICAN UNIVERSITY OF PUERTO RICO.	BMPIF–19950707DC	LMP	WLX323	2092	AGUA, PR		BG
ARIZONA BD OF REGENT/AZ ST UNIV.	BEIFB–20011210AAK	E	WND497	90683	SHAW BUTTE, AZ.		BG
ARIZONA BD OF REGENTS/AZ ST UNIV.	BEIFB–20011210AAJ	E	WND496	90682	SHAW BUTTE, AZ.		AG
BAYSIDE ACADEMY	BEIF–20020306AAS	E	WNC875	80795	PRICHARD, AL		DG
BD OF ED, SPECIAL SCHOOL DIST. #1.	BMPIF–19951018AY	MP	WLX200	4196	MINNEAPOLIS, MN.		DG
BD OF REG EASTERN NEW MEXICO UNI.	BPIF–19951020YB	P	NEW	80941	ALAMOGORDO, NM.		DG
BD OF REGS OF NEW MEXICO STATE UNI.	BPIF–19951020NI	P	NEW	80247	SILVER CITY, NM.		AG
BD OF REGS OF NEW MEXICO STATE UNI.	BPIF–19951020WW	P	NEW	81061	ALAMOGORDO, NM.		AG
BELLSOUTH WIRELESS CABLE INC.	BPIF–19980123DE	P	NEW	89707	ATLANTA, GA.		
BELLSOUTH WIRELESS CABLE, INC.	BPIF–19980123DF	P	NEW	89706	ATLANTA, GA.		
BLOUNT HIGH	BMPIF–19950914HJ	MP	WNC635	5889	BUCKS, AL		BG
BOOKCLIFF CHRISTIAN SCHOOL.	BPIF–19951020TS	P	NEW	80397	GRAND JUNCTION, CO.		GG
BOWDON PUBLIC SCHOOL	BMPIF–20000818AEC	MP	WLX944	6552	BOWDON, ND		A4
BRADLEY COUNTY SCHOOL SYSTEM.	BMAIF–20010605AAB	P	NEW	80437	FAIRMONT, TN		A3 A4
BRIGHAM YOUNG UNIVERSITY	BEIF–20010412AAI	E	WNC989	80667	PROVO, UT		GG
BROWN UNIV IN PROV. ST/RI AND PROV.	BRIF–19990301AAD	R	WLX200	4196	MINNEAPOLIS, MN.		DG
BRUNSWICK COMMUNITY COLLEGE.	BPIFB–20020228AAG	P	NEW	308197	BURGAW, NC		BG
BRUNSWICK COMMUNITY COLLEGE.	BPIFB–20020228AAH	P	NEW	308198	BURGAW, NC		BG
BURLINGTON COLLEGE	BPIF–19911008DA	P	NEW	7850	NORTHFIELD, VT.		BG
BURLINGTON COLLEGE	BPIF–19911008DX	P	NEW	7852	SHOREHAM, VT		BG
BURLINGTON COLLEGE	BPIF–19920110DE	P	NEW	7848	WINDSOR, VT		BG
BURLINGTON COLLEGE	BPIF–19920110DG	P	NEW	7843	THETFORD, VT		BG
BUTTE COUNTY OFFICE OF EDUCATION.	BSTAIF–20000309AAL	STA	WND221	80541	CHICO, CA		BG
CALIFORNIA POLYTECHNIC STATE UNIVERSITY.	BPIF–19951020ZQ	P	NEW	80793	SAN LUIS OBISPO, CA.		GG

ITFS APPLICATIONS BEING DISMISSED—Continued

Licensee name	File No.	Purp	Call sign	Fac ID	Transmitter city/state	BTA	Channel list
CARIBBEAN UNIVERSITY	BMPIF–20000818CZL	LMP	WLX315	8795	AGUAS BUENAS, PR.		CG
CARTERET COMMUNITY COLLEGE.	BPIF–19951020TX	P	NEW	80451	JACKSONVILLE, NC.		AG
CASPER COLLEGE	BPIF–19951020T8	P	NEW	81065	CASPER, WY		CG
CATHOLIC ARCHDIOCESE OF SAN JUAN.	BMPIF–20000818CZK	LMP	WLX321	9336	AGUAS BUENAS, PR.		AG
CATHOLIC DIOCESE OF CAGUAS.	BPIF–19951020WN	P	NEW	80587	GURABO, PR		AG
CATHOLIC UNIVERSITY OF PUERTO RICO.	BPIF–19951020MB	P	NEW	80213	JAYUYA, PR		CG
CENTER FOR ECONOMIC AND SOCIAL JUSTICE.	BPIF–19951020JZ	P	NEW	79969	WENATCHEE, WA.		DG
CHAMPLAIN COLLEGE	BPIF–19911010DS	P	NEW	10127	SHOREHAM, VT		AG
CHAMPLAIN COLLEGE	BPIF–19920110DJ	P	NEW	10123	THETFORD, VT		AG
CHANDLER UNIFIED SCHOOL DISTRICT #80.	BPIF–19951020CC	P	NEW	79597	GLOBE, AZ		GG
CHRISTIAN EDUCATIONAL NETWORK.	BPIF–19931230GH	P	NEW	11000	OMAHA, NE		DG
CHURCH POINT MINISTRIES	BPIF–19931230HL	P	NEW	11190	PLAQUEMINE, LA.		CG
CLARENDON FOUNDATION	BEIF–20010821AAK	E	WNC903	80483	SEBRING, FL		CG
CLARK COUNTY SCHOOL DISTRICT.	BPIFB–20010702AAD	P	NEW	308024	HENDERSON, NV.		E2
CLARK COUNTY SCHOOL DISTRICT.	BPIFB–20010702AAF	P	NEW	308026	HENDERSON, NV.		E2
CLARK COUNTY SCHOOL DISTRICT.	BPIFB–20010702AAN	P	NEW	308034	HENDERSON, NV.		E2
CLARK COUNTY SCHOOL DISTRICT.	BPIFB–20010702AAP	P	NEW	308036	HENDERSON, NV.		E2
CLARK COUNTY SCHOOL DISTRICT.	BPIFB–20010702AAX	P	NEW	308045	HENDERSON, NV.		E2
CLARK COUNTY SCHOOL DISTRICT.	BPIFH–20010702AAC	P	NEW	308023	HENDERSON, NV.		E2
CLARK COUNTY SCHOOL DISTRICT.	BPIFH–20010702AAE	P	NEW	308025	HENDERSON, NV.		E2
CLARK COUNTY SCHOOL DISTRICT.	BPIFH–20010702AAM	P	NEW	308033	HENDERSON, NV.		E2
CLARK COUNTY SCHOOL DISTRICT.	BPIFH–20010702AAO	P	NEW	308035	HENDERSON, NV.		E2
CLARK COUNTY SCHOOL DISTRICT.	BPIFH–20010702AAW	P	NEW	308044	HENDERSON, NV.		E2
CLEVELAND COMMUNITY COLLEGE.	BPIF–19951020OC	P	NEW	80317	GAFFNEY, SC		AG
COCHISE COUNTY SCHOOL SUPERINTENDENT'S O.	BPIF–19951020NG	P	NEW	80215	SIERRA VISTA, AZ.		AG
COMSTOCK INDEPENDENT SCHOOL DISTRICT.	BPIF–19951020VM	P	NEW	80467	DEL RIO, TX		CG
CONCORD COMMUNITY SCHOOLS.	BPIF–19920717DB	P	NEW	13554	JACKSON, MI		BG
COTTON VALLEY HIGH SCHOOL.	BPIF–19931230DB	P	NEW	14023	SHREVEPORT, LA.		AG
COUSHATTA ELEMENTARY SCHOOL.	BPIF–19931230IG	P	NEW	14213	NATCHITOCHES, LA.		CG
COUSHATTA HIGH SCHOOL	BPIF–19931230HI	P	NEW	14214	NATCHITOCHES, LA.		AG
COVENANT COLLEGE	BPIF–19951020WO	P	NEW	80597	FAIRMONT, TN		CG
CRAVEN COMMUNITY COLLEGE.	BPIF–19951020RF	P	NEW	80967	JACKSONVILLE, NC.		BG
CRAVEN COUNTY SCHOOL SYSTEM.	BPIF–19951020RQ	P	NEW	80953	JACKSONVILLE, NC.		CG
DALLAS COUNTY BOARD OF EDUCATION.	BPIF–19961223AZ	P	NEW	85191	BURNSVILLE, AL		DG
DELTA JUNIOR COLLEGE	BPIF–19921224DD	P	NEW	16534	BATON ROUGE, LA.		CG
DEMING PUBLIC SCHOOLS	BPIF–19951018AS	P	NEW	79903	DEMING, NM		AG
DEMING PUBLIC SCHOOLS	BPIF–19951019BM	P	NEW	81035	ALAMOGORDO, NM.		CG
DES MOINES JEWISH ACADEMY.	BPIF–19931230DW	P	NEW	16721	DES MOINES, IA		CG

ITFS APPLICATIONS BEING DISMISSED—Continued

Licensee name	File No.	Purp	Call sign	Fac ID	Transmitter city/ state	BTA	Channel list
DIOCESE OF BATON ROUGE	BPIF–19931229GU	P	NEW	16949	PLAQUEMINE, LA.		BG
DOYLINE HIGH SCHOOL	BPIF–19931230DO	P	NEW	17498	SHREVEPORT, LA.		B3 B4
DUVAL COUNTY SCHOOL BOARD.	BLNPIF–20010123AAO	LNP	WLX922	17773	JACKSONVILLE, FL.		AG
EAST BATON ROUGE PARISH SCHOOL.	BPIF–19931230GZ	P	NEW	18186	PLAQUEMINE, LA.		BG
EAST VALLEY INSTITUTE OF TECHNOLOGY DIST.	BPIF–19951020DX	P	NEW	79899	GLOBE, AZ		BG
EASTMONT SCHOOL DISTRICT #206.	BPIF–19951020ZD	P	NEW	80737	WENATCHEE, WA.		DG
EMERSON COLLEGE	BMPIF–19960919AB	MP	WHR758	19480	BOSTON, MA		C1
EMERSON COLLEGE	BPIF–19960919AA	P	NEW	86592	BOSTON, MA		A3 A4
EUDORA UNIFIED SCHOOL DISTRICT #491.	BRIF–20010821AAJ	R	WLX327	19819	OTTAWA, KS		CG
EVANGEL ACADEMY	BPIF–19951020SX	P	NEW	80327	SHREVEPORT, LA.		GG
FARGO PUBLIC SCHOOLS	BPIFB–20000818DLH	P	NEW	307802	AMENIA, ND		CG
GRAMBLING STATE UNIVERSITY.	BPIF–19930219DO	P	NEW	24742	MONROE, LA		DG
HALE COUNTY BOARD OF EDUCATION.	BMPIF–19961223FZ	MP	WNC604	25849	BURNSVILLE, AL		BG
HALE COUNTY HIGH SCHOOL	BMPIF–19961223DE	MP	WNC603	25848	BURNSVILLE, AL		AG
HALL SUMMIT HIGH SCHOOL	BPIF–19931230HN	P	NEW	25876	NATCHITOCHES, LA.		BG
HEARD HIGH & MIDDLE SCHOOL.	BMPIF–19961223BF	LMP	WLX861	26605	FRANKLIN, GA		BG
HISPANIC INFO & TELEC NETWORK, INC.	BPIFH–20000818AJO	P	NEW	305436	TIVERTON, RI		B1 B2 B3
HISPANIC INFO & TELEC NETWORK, INC.	BPIFH–20010420AEK	P	NEW	307919	TIVERTON, RI		BG
HISPANIC INFO. & TELECO. NETWORK, INC.	BPIF–19951016BO	P	NEW	81103	RICHMOND, VA		D1 D2
HOLY ANGEL SCHOOL	BPIF–19951020BT	P	NEW	79773	GLOBE, AZ		DG
HOT SPRINGS CITY SCHOOL DISTRICT.	BPIF–19951019CM	P	NEW	79609	HOT SPRINGS, AR.		CG
IBERIA PARISH SCHOOL BOARD.	BPIF–19951020PI	P	NEW	80229	YOUNGSVILLE, LA.		GG
IBERVILLE PARISH SCHOOL	BPIF–19931230HE	P	NEW	28198	PLAQUEMINE, LA.		GG
INDIANA HIGHER EDUCATION TELECOMMUNICATI.	BEIF–20010228AAF	E	WLX252	66500	BEDFORD, IN		GG
INDIANA HIGHER EDUCATION TELECOMMUNICATI.	BMPIF–19950914ES	MP	WGI228	66501	WEST LAFAYETTE, IN.		BG
INDIANA HIGHER EDUCATION TELECOMMUNICATI.	BMPIF–19951020P7	LMP	WHR825	66533	RENSSELAER, IN.		CG
INDIANA HIGHER EDUCATION TELECOMMUNICATI.	BPIFH–20000818AOP	P	NEW	305642	INDIANAPOLIS, IN.		AG
IRA INDEPENDENT SCHOOL DISTRICT.	BPIF–19920424DZ	P	NEW	29133	SNYDER, TX		CG
ISOTHERMAL COMMUNITY COLLEGE.	BPIF–19951020PL	P	NEW	80253	GAFFNEY, SC		CG
KENNETT PUBLIC SCHOOL DISTIRCT NO. 39.	BPIF–19920228DG	P	NEW	34021	MALDEN, MO		DG
KENT COUNTY VOC TECH SCHOOL DIST.	BPIF–19950818DM	P	NEW	77703	WOODSIDE, DE		AG
LAKE FOREST SCHOOL DISTRICT.	BPIF–19950818DN	P	NEW	77704	WOODSIDE, DE		BG
LAMAR COUNTY BOARD OF EDUCATION.	BEIF–20020131AAZ	E	WNC281	36450	BANKSTON, AL		CG
LAS CRUCES PUBLIC SCHOOLS.	BPIF–19951018AT	P	NEW	79915	ALAMOGORDO, NM.		DG
LAS CRUCES PUBLIC SCHOOLS.	BPIF–19951019BY	P	NEW	79505	SILVER CITY, NM.		DG
LAWRENCE COUNTY BOARD OF EDUCATION.	BMPIF–19961223EZ	MP	WNC488	36749	BURNSVILLE, AL		CG
LEHIGH VALLEY ASSOCIATION OF INDEPENDENT.	BPIF–19951019AH	P	NEW	79529	ALLENTOWN, PA		AG
LENOIR COMMUNITY COLLEGE.	BPIF–19951020CS	P	NEW	79747	TRENTON, NC		AG

ITFS APPLICATIONS BEING DISMISSED—Continued

Licensee name	File No.	Purp	Call sign	Fac ID	Transmitter city/state	BTA	Channel list
LIFE TABERNACLE & ACADEMY.	BPIF–19951020ZO	P	NEW	80771	GRAND JUNCTION, CO.		CG
LIFE TABERNACLE AND ACADEMY.	BPIF–19951020ZF	P	NEW	80745	DELTA, CO		AG
LOUISIANA ART INSTITUTE	BPIF–19921224DE	P	NEW	38582	BATON ROUGE, LA.		GG
LOUISIANA STATE UNIV ALUMNI ASSOC.	BPIF–19931228DI	P	NEW	38609	PLAQUEMINE, LA.		GG
LOUISIANA STATE UNIV ALUMNI ASSOC.	BPIF–19931229DC	P	NEW	38608	NATCHITOCHES, LA.		CG
LOUISIANA STATE UNIV ALUMNI ASSOC.	BPIF–19931229HP	P	NEW	38611	RUSTON, LA		CG
LSU ALUMNI ASSOCIATION	BPIF–19951020IG	P	NEW	79859	DELHI, LA		CG
MACOMB INTERMEDIATE SCHOOL DISTRICT.	BEIF–20020222AAB	E	WHR914	39555	CLINTON TOWNSHIP, MI.		B3 B4
MARAIA DES CYGNES VALLEY US DIST 456.	BRIF–20010821AAI	R	WLX331	39864	OTTAWA, KS		BG
MESA COUNTY VALLEY SCHOOL DISTRICT NO. 5.	BPIF–19951020S8	P	NEW	80945	GRAND JUNCTION, CO.		AG
MESA STATE COLLEGE	BPIF–19951020FK	P	NEW	79825	GRAND JUNCTION, CO.		BG
MESA UNIFIED SCHOOL DISTRICT #4.	BPIF–19951020QF	P	NEW	80235	GLOBE, AZ		DG
MILWAUKEE AREA DIST BD TECH ADULT ED.	BPIFH–20000818ATC	P	NEW	305784	MILWAUKEE, WI		G2 G3 G4
MILWAUKEE BD. OF SCHOOL DIRECTORS.	BLMPIF–19961220AK	LMP	KHF80	42668	MILWAUKEE, WI		BG
MINDEN HIGH SCHOOL	BPIF–19931230DA	P	NEW	42686	RUSTON, LA		AG
MINEOLA UNION FREE SCHOOL DISTRICT.	BLNPIF–19920630DA	LNP	KNZ71	42687	MINEOLA, NY		GG
MULTIMEDIA DEVELOPMENT CORP.	BPIFB–19990122EB	P	NEW	92616	PORTALES, NM		GG
NATRONA COUNTY SCHOOL DISTRICT NO. 1.	BPIF–19951020S9	P	NEW	80955	CASPER, WY		DG
NEBRASKA CITY SCHOOL DIST 111.	BMPIF–19961223CP	MP	WNC659	47958	TECUMSEH, NE		BG
NEEDLES UNIFIED SCHOOL DISTRICT.	BPIF–19951020IS	P	NEW	80009	BULLHEAD CITY, AZ.		AG
NETWORK FOR INSTRUCTIONAL TV INC.	BMPIF–19950914JO	MP	WLX951	48316	ANDERSON, IN		DG
NEW CASTLE CTY VOC TECH SCHOOL DIST.	BPIF–19950818DL	P	NEW	77705	WOODSIDE, DE		GG
NEW JERSEY PUBLIC B/CG AUTHORITY.	BMPIF–19950914KB	MP	WLX250	48476	TRENTON, NJ		C2 C3 C4
NEW JERSEY PUBLIC B/CG AUTHORITY.	BMPIF–19950914KH	MP	WHR822	48459	WARREN TOWNSHIP, NJ.		GG
NORTH CENTRAL EDUCATIONAL SERVICE.	BPIF–19951020HW	P	NEW	81053	WENATCHEE, WA.		GG
NORTHEAST LOUISIANA UNIVERSITY.	BPIF–19951020SR	P	NEW	80423	MONROE, LA		CG
NORTHWESTERN STATE UNIVERSITY.	BEIF–20011218AAE	E	WND344	85247	LEESVILLE, LA		BG
NORWICH UNIVERSITY	BPIF–19911008DD	P	NEW	49809	SHOREHAM, VT		CG
NORWICH UNIVERSITY	BPIF–19920110DF	P	NEW	49805	WINDSOR, VT		CG
NOWATA PUBLIC SCHOOLS	BNPIF–19920825DB	NP	WLX596	49829	LENAPAH, OK		AG
OKLAHOMA EDUCATIONAL TV AUTHORITIY.	BNPIF–19950711DU	LNP	WHR559	50202	OKLAHOMA CITY, OK.		CG
OKLAHOMA STATE UNIVERSITY.	BPIF–19931230AA	P	NEW	90623	HOCKER, OK		GG
ONSLOW CONTINUING EDUCATION.	BPIF–19951020MN	P	NEW	80113	JACKSONVILLE, NC.		BG
ONSLOW COUNTY SCHOOLS	BPIF–19951020LX	P	NEW	80217	JACKSONVILLE, NC.		AG
ONSLOW EXCEPTIONAL CHILDREN.	BPIF–19951020ML	P	NEW	80129	JACKSONVILLE, NC.		D1 D2 D3
ONSLOW FEDERAL ACADEMICS.	BPIF–19951020MJ	P	NEW	80143	JACKSONVILLE, NC.		CG
OUACHITA ACADEMY OF ARTS AND SCIENCE.	BMPIF–19950525EF	MP	WNC534	50770	RAYVILLE, LA		BG
PANHANDLE AREA ED'L COOPERATIVE.	BMPIF–19951020T4	MP	WHR879	51460	MARIANNA, FL		AG

ITFS APPLICATIONS BEING DISMISSED—Continued

Licensee name	File No.	Purp	Call sign	Fac ID	Transmitter city/ state	BTA	Channel list
PANHANLE AREA ED'L COOPERATIVE.	BMPIF–19951020R4	MP	WHR800	51476	CHIPLEY, FL		GG
PARADISE UNIFIED SCHOOL DISTRICT.	BSTAIF–20000309AAM	STA	WND222	80359	CHICO, CA		DG
PORT ARTHUR INDEPEND SCHOOL DISTRICT.	BEIF–20020221AAH	E	WLX356	53027	VIDOR, TX		CG
PORTAGEVILLE SCHOOL DISTRICT.	BPIF–19920228DE	P	NEW	53051	MALDEN, MO		CG
PORTALES HIGH SCHOOL	BPIFB–19990122EZ	P	NEW	92629	PORTALES, NM		CG
PORTLAND COMMUNITY COLLEGE.	BPIFH–20000818CGZ	P	NEW	307062	VANCOUVER, WA.		B3
PUERTO RICO MEDICAL ASSOCIATION.	BMPIF–19950707DH	LMP	WLX322	53864	AGUKAS BUENAS, PR.		DG
REGION IV EDUCATION SERVICE CENTER.	BPIFB–20000818CEI	P	NEW	306983	HOUSTON, TX		AG
REID INSTITUTE	BPIF–19951020HN	P	NEW	81049	PROVO, UT		CG
RICHMOND HILL CHRISTIAN ACADEMY.	BPIF–19951020PH	P	NEW	80207	BLOOMINGDALE, GA.		BG
ROMAN CATH DIOCESE OF RKVILLE CENTRE.	BMPIF–19950914LZ	MP	KNZ65	57484	UNIONDALE, NY		EG
ROMAN CATH DIOCESE ROCKVILLE CENTER.	BNPIF–19950321DU	NP	WHR845	57482	AMITYVILLE, NY		GG
ROMAN CATHOLIC COMMUNICATIONS CORP. DBA.	BPIF–19951020A9	P	NEW	80807	(RURAL), CA		CG
SAINT MICHAEL'S COLLEGE	BPIF–19911008DQ	P	NEW	58591	SHOREHAM, VT		DG
SAINT MICHAEL'S COLLEGE	BPIF–19920110DN	P	NEW	58592	WINDSOR, VT		DG
SAN CARLOS UNIFIED SCHOOL DISTRICT #2.	BPIF–19951020IZ	P	NEW	79955	GLOBE, AZ		BG
SAN LUIS COASTAL UNIFIED SCHOOL DISTRICT.	BPIF–19951020XF	P	NEW	80619	SAN LUIS OBISPO, CA.		GG
SANTA FE TRAIL USD #434 SCHOOL DIST.	BRIF–20010821AAH	R	WLX330	59075	OTTAWA, KS		AG
SAREPTA HIGH SCHOOL	BPIF–19931230DC	P	NEW	59128	SHREVEPORT, LA.		CG
SCHOOL DIST OF CITY OMAHA ST OF NEB.	BRIF–19991201AAE	R	KWU42	59336	OMAHA, NE		A1 A2
SCHOOL DISTRICT OF PALM BEACH COUNTY.	BALIF–9550758	AL	KZB30	300048	LOXAHATCHEE, FL.		HG
SCIOTO COUNTY EDUCATIONAL SERVICE CENTER.	BPIF–19951020DT	P	NEW	79801	OTWAY, OH		GG
SEMINOLE INDEPEND SCHOOL DISTRICT.	BMPIF–19961223DD	MP	WNC328	59666	SEMINOLE, TX		GG
SHEKINAH NETWORK	BPIF–19951019BJ	P	NEW	79431	MIDWAY, NC		GG
SHELBY SCHOOL DISTRICT #32.	BNPIF–19981006DO	NP	WNC480	60084	SILVER CREEK, NE.		GG
SIBLEY HIGH SCHOOL	BPIF–19931230DL	P	NEW	60274	RUSTON, LA		B1 B2
SILVER CONSOLIDATED SCHOOLS.	BPIF–19951019CA	P	NEW	79519	SILVER CITY, NM.		AG
SOUTHERN UNIV AGRICULTURAL & MECH COL.	BPIF–19931230GW	P	NEW	61380	PLAQUEMINE, LA.		AG
SOUTHLAND C–9 SCHOOL DISTRICT.	BPIF–19920228DD	P	NEW	61412	MALDEN, MO		AG
SOUTHWESTERN OKLAHOMA STATE UNIV.	BEIF–20020228AAA	E	WNC581	61589	CORN, OK		BG
ST ANDREWS EPISCOPAL CHURCH.	BPIF–19951020YK	P	NEW	80983	SCOTTSBLUFF, NE.		GG
ST MARY'S CITY SCHOOLS	BMPIFB–19950829HJ	MP	WLX977	62067	CRIDERSVILLE, OH.		CG
ST. AGNES; SCHOOLS FOUNDATION.	BPIF–19951020VX	P	NEW	80609	SCOTTSBLUFF, NE.		AG
TATTNALL COUNTY BOARD OF EDUCATION.	BPIF–19951020T6	P	NEW	81041	BLOOMINGDALE, GA.		DG
TECHNICAL TRADES INSTITUTE.	BPIF–19951020SH	P	NEW	80445	GRAND JUNCTION, CO.		D1 D2 D3
TEEWINOT LICENSING INC	BPIF–19980103DP	P	NEW	89826	BURLEY, ID.		
TENNESSEE TEMPLE UNIVERSITY.	BMAIF–20010605AAC	P	NEW	80797	FAIRMONT, TN		A1 A2
TEXAS STATE TECHNICAL COLLEGE.	BPIF–19951020UF	P	NEW	80379	LONGVIEW, TX		GG

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TEXAS STATE TECHNICAL COLLEGE.	BPIF–19951020VI	P	NEW	80505	DEL RIO, TX		AG
THE BOARD OF EDUCATION OF THE BOROUGH OF.	BPIF–19951020RN	P	NEW	80975	TOMS RIVER, NJ		GG
THE BOARD OF REGENTS OF THE UNIVERSITY S.	BPIF–19951020VB	P	NEW	80681	BLOOMINGDALE, GA.		DG
THE CRARY SCHOOL	BPIFB–20020207AAA	P	NEW	308182	BURGAW, NC		CG
THE CRARY SCHOOL	BPIFB–20020207AAB	P	NEW	308183	BRUNSWICK, NC		CG
THE INFORMATION RESOURCE FOUNDATION.	BPIF–19951020PK	P	NEW	80245	GRAND JUNCTION, CO.		BG
THE REGENTS OF THE UNIV. OF CA.	BMPIF–19951020L9	MP	WAQ323	66324	SANTA BARBARA, CA.		AG
THE SCHOOL BD. OF LEE COUNTY FLORIDA.	BMPIF–20000818AIV	MP	WBE805	66341	FT. MYERS, FL		B1 B2 B3
TOMS RIVER BOARD OF EDUCATION.	BPIF–19951020Q1	P	NEW	80913	TOMS RIVER, NJ		DG
TRANSITION NETWORK, INC	BLIF–19990115DY	L	WNC806	80363	HILO, HI		AG
TRICJU GEBREW ACADEMY OF ATLANTIC COUNTY.	BPIF–19951020BH	P	NEW	79671	CORBIN CITY, NJ.		GG
TRINITY COLLEGE OF VERMONT.	BPIF–19911010DT	P	NEW	68107	SHOREHAM, VT		GG
TRINITY COLLEGE OF VERMONT.	BPIF–19911010DW	P	NEW	68105	NORTHFIELD, VT.		GG
TRINITY COLLEGE OF VERMONT.	BPIF–19920110DD	P	NEW	87010	WINDSOR, VT		GG
TRINITY COLLEGE OF VERMONT.	BPIF–19920110DH	P	NEW	68103	THETFORD, VT		GG
TROY STATE UNIVERSITY MONTGOMERY.	BPIF–19961223GN	P	NEW	85237	BURNSVILLE, AL		GG
TYLER INDEPENDENT SCHOOL DISTRICT.	BPIF–19951020OR	P	NEW	80569	TYLER, TX		GG
UATH CONTRACTORS SCHOOL, L.L.C.	BPIF–19951020HO	P	NEW	81047	PROVO, UT		DG
UNIFIED SCHOOL DISTRIT #286.	BNPIF–19920825DA	NP	WLX605	68777	LENAPAH, OK		BG
UNION TOWNSHIP SCHOOLS	BLNPIF–19920601DF	LNP	WGM95	68814	UNION CITY, NJ		C1
UNIVERSITY OF NORTH CAROLINA.	BPIF–19951020IU	P	NEW	79991	JACKSONVILLE, NC.		CG
UNIVERSITY OF NORTH CAROLINA CENTER FOR.	BPIF–19951020D5	P	NEW	80853	JACKSONVILLE, NC.		BG
UNIVERSITY OF TEXAS HEALTH SCIENCE CTR A.	BPIFB–20000818DFG	P	NEW	307663	PASADENA, TX		BG
UTAH VALLEY STATE COLLEGE.	BPIF–19951020YZ	P	NEW	80717	PROVO, UT		DG
VERMONT WIRELESS COOPERATIVE.	BMPIF–19951016AU	MP	WNC674	69969	EAST ALBURG, VT.		GG
VERMONT WIRELESS COOPERATIVE.	BMPIF–19951016BB	MP	WNC670	69973	EAST ALBURG, VT.		A2 A3 A4
VERMONT WIRELESS COOPERATIVE.	BMPIFB–19951016AY	MP	WNC671	69970	EAST ALBURG, VT.		BG
VERMONT WIRELESS COOPERATIVE.	BMPIFB–19951016BA	MP	WNC673	69971	EAST ALBURG, VT.		DG
VERMONT WIRELESS COOPERATIVE.	BMPIFB–19951016BK	MP	WNC672	69972	EAST ALBURG, VT.		CG
VIEWS ON LEARNING INC	BPIFB–20000818AFA	P	NEW	305238	CASSOPOLIS, MI		CG
VIEWS ON LEARNING, INC	BPIF–19951020HL	P	NEW	84585	DELTA, CO		D4
WASHINGTON COUNTY DISTRICT SCHOOL BD.	BEIF–20010830AAH	E	WND293	80251	COTTONDALE, FL.		BG
WEBSTER JR. HIGH SCHOOL	BPIF–19931230DK	P	NEW	71414	RUSTON, LA		CG
WENATCHEE VALLEY COLLEGE COMMUNITY COLLE.	BPIF–19951020ZE	P	NEW	80741	WENATCHEE, WA.		BG
WEST SHORE SCHOOL DIST	BPIF–19951020GX	P	NEW	79921	HARRISBURG, PA.		CG
WESTERN NEW MEXICO UNIVERSITY.	BPIF–19951019AF	P	NEW	79489	DEMING, NM		GG
WESTERN NEW MEXICO UNIVERSITY.	BPIF–19951019BL	P	NEW	79437	ALAMOGORDO, NM.		GG

MDS AND MMDS APPLICATIONS BEING DISMISSED

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ADELPHIA BLAIRSVILLE, LLC	BRMD–20010430AAS	R	WMH689	301349	MUNCIE, IN		EG
ALDA GOLD, INC	BPMDH–20000818BMR	P	NEW	306407	PASADENA, TX		HG
ALDA TUCSON, INC	BPMDH–20000818DHR	P	NEW	307728	TUCSON, AZ		2A
ALDA TUCSON, INC	BPMDH–20000818DHV	P	NEW	307733	TUCSON, AZ		1
ALDA WIRELESS HOLDINGS, INC.	BRMD–20010328ADG	R	WLW697	301121	DANVILLE, VA		EG
ALLIED PROPERTIES, INC	BPMD–20000818DMC	P	NEW	308081	STATE COLLEGE, PA.	429	E2 E3 E4
ALLIED PROPERTIES, INC	BPMDH–20000818CRL	P	NEW	307361	STATE COLLEGE, PA.	429	1 2A
AMERICAN TELECASTING OF COLORADO SPRINGS.	BPMDH–20000823AAA	P	NEW	305311	COLORADO SPRINGS, CO.		2A
AMERICAN TELECASTING OF COLUMBUS, INC.	BPMDB–20000818DHL	P	NEW	307722	COLUMBUS, OH.		H1
AMERICAN TELECASTING OF JACKSONVILLE, IN.	BPMD–19970811XI	P	NEW	303403	JACKSONVILLE, FL.	212	1
AMERICAN TELECASTING OF LINCOLN, INC.	BPMDH–20010611AAA	P	NEW	307850	LINCOLN, NE	256	1
AMERICAN TELECASTING OF LINCOLN, INC.	BPMDH–20010611AAB	P	NEW	307851	LINCOLN, NE	256	2A
AMERICAN TELECASTING OF MEDFORD, INC.	BLMPMDC–9550415	LMP	WMX660	302487	MEDFORD, OR		AG
AMERICAN TELECASTING OF MEDFORD, INC.	BPMDC–9550297	P	WMX660	302487	MEDFORD, OR		AG
AMERICAN TELECASTING OF PORTLAND, INC.	BPMDB–20000818BVY	P	NEW	306705	PORTLAND, OR		EG
AMERICAN TELECASTING OF RAPID CITY, INC.	BMPMDC–9550371	LMP	WMX635	302463	RAPID CITY, SD.		AG
AMERICAN TELECASTING OF ROCKFORD, INC.	BEMD–9651213	E	WMI326	301423	JANESVILLE, WI.		FG
AMERICAN TELECASTING OF YOUNGSTOWN, INC.	BPMDH–20010611AAH	P	NEW	307957	YOUNGSTOWN, OH.	484 2A	
AMERICAN TELECASTING, INC	BPMDC–9203938	P	NEW	302415	STRASBURG, VA.		BG
AMERICAN WIRELESS, INC DBA SKYVIEW TEC.	BPMDH–20000818ACV	P	NEW	305167	ST. GEORGE, UT.		1
ARKSTAR PARTNERSGAMMA	BRMD–20010330AAR	R	WNTL298	302239	DARDANELLE, AR.		HG
ASC COMMUNICATIONS, INC	BALMD–19991202AAE	AL	WMH541	301311	SAN DIEGO, CA.		FG
ASC COMMUNICATIONS, INC	BEMD–9650762	E	WMH541	301311	SAN DIEGO, CA.		FG
ASHEVILLE (E) WIRELESS CABLE PARTNERSHIP.	BEMD–9651443	E	WMX214	301563	ASHEVILLE, NC		H2
B2 TELEVISION PARTNERSHIP	BMD–9750196	?	WNLM904	301811	FAIRPORT, NY.		
BCW SYSTEMS, INC	BRMD–20010425AAO	R	WNTJ367	302133	MALDEN, MO		HG
BIG SKY WIRELESS PARTNERSHIP.	BPMDH–20000818ADC	P	NEW	305175	BUTTE, MT	064	1 2A
BLAKE TWEDT	BPMDH–20010913AAD	P	NEW	308120	ERIE, PA	131	H3
BOLIN ENTERPRISES, INC	BTCMD–20020318AAA	TC	WLW800	301167	JEWETT, IL		1
BONANZA PARTNERS I	BEMD–9651067	E	WNTM679	302271	BISMARCK, ND		HG
BONNIE D. O'CONNELL	BMPMD–20000810AAE	MP	WMY295	301681	MCGREGOR, GA.		EG
BOWLING GREEN (F) WIRELESS CABLE PARTNER.	BMPMDC–9650185	MP	WMX675	302502	BOWLING GREEN, KY.		CG
BOWLING GREEN (F) WIRELESS CABLE PARTNER.	BMPMDC–9650186	MP	WMX650	302478	BOWLING GREEN, KY.	DG	
BRIGHAM YOUNG UNIVERSITY	BPMDB–20000818CEP	P	NEW	306990	SANTEE, CA		H2
BRIGHAM YOUNG UNIVERSITY	BPMDH–20000818CYJ	P	NEW	307129	MILWAUKEE, WI.		H2
BROADCAST DATA CORPORATION.	BPMDH–20000818CYH	P	NEW	307135	MILWAUKEE, WI.		H3
C & W ENTERPRISES, INC	BRMD–20010321AAP	R	WNTC543	301890	SAN ANGELO, TX.		H1
CENTURY MICROWAVE CORPORATION.	BALMD–20000421AAC	AL	WMH689	301349	MUNCIE, IN		EG
CFW LICENSES, INC	BPMDH–20000818CKB	P	NEW	307162	CHARLOTTESVILLE, VA.	075 2A	
CONSOLIDATED TELCOM	BPMDC–9651585	P	NEW	302436	KILLDEER, ND.		

MDS AND MMDS APPLICATIONS BEING DISMISSED—Continued

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DALE E. & DONNA L. LAWRENCE.	BMPMDC–9550372	LMP	WMX632	302460	RAPID CITY, SD.		CG
DAVID WIECHMAN	BMPMD–9450272	MP	WMH573	301318	LEXINGTON, KY.		EG
DENNIS R. LONG	BALMD–9551597	AL	WMI836	301490	HARRISBURG, PA.		FG
DIGITAL AND WIRELESS TELEVISION, L.L.C.	BEMD–9750097	E	WMX914	301634	RIVERTON, WY		H1
DIGITAL AND WIRELESS TELEVISION, L.L.C.	BEMD–9750098	E	WMX912	301632	RIVERTON, WY		H2
DIGITAL AND WIRELESS TELEVISION, L.L.C.	BEMD–9750099	E	WMX913	301633	RIVERTON, WY		H3
DIGITAL AND WIRELESS TELEVISION, L.L.C.	BPMDH–20000818BYR	P	NEW	306820	RYEGATE, MT	041	1
DIGITAL AND WIRELESS TELEVISION, L.L.C.	BPMDH–20000818BYT	P	NEW	306822	PONDEROSA, CO.	110	E2 E3 E4
DIGITAL AND WIRELESS TELEVISION, L.L.C.	BPMDH–20000818BZB	P	NEW	306835	RYEGATE, MT	041	E2 E3 E4
DIGITAL AND WIRELESS TELEVISION, L.L.C.	BPMDH–20000818CDY	P	NEW	306972	RAPID CITY, SD.	369	1
DIGITAL AND WIRELESS TELEVISION, L.L.C.	BPMDH–20000818CDZ	P	NEW	306974	RAPID CITY, SD.	369	2A
DURHAM LIFE BROADCASTING, INC.	BEMD–9750031	E	WMX524	301621	AUBURN, NC		1
E.T. PARTNERSHIP	BEMD–9651100	E	WJL89	301006	CARSON CITY, NV.		1
EAGLE TELEVISION, INC	BALMD–19990825AAW	AL	WLW726	301126	PROWERS CITY, CO.		H1
EAGLE TELEVISION, INC	BRMDC–20010402AEH	R	WMX658	302485	PROWERS CTY, CO.		BG
EAGLEVIEW TECHNOLOGIES, INC.	BALMD–9651137	AL	KFJ28	300024	SPOKANE, FL		1
EAGLEVIEW TECHNOLOGIES, INC.	BRMD–9157876	R	KFJ28	300024	SPOKANE, FL		1
EARL S. KIM	BEMD–9950056	E	KFF79	300020	LOS ANGELES, CA.		1
EARL S. KIM	BEMD–9950057	E	KFI79	300022	LA HABRA, CA		1
EARL S. KIM	BEMD–9950058	E	WPY40	302326	LOS ANGELES, CA.		1
F CHANNEL BLOCK, KEY WEST FL PAY TV.	BRMD–20010806AAJ	R	WMY476	301738	KEY WEST, FL		FG
FORTUNA SYSTEMS CORPORATION.	BPMDH–20000818DAC	P	NEW	307582	LINCOLN, NE		H1
FOUR PRO PLUS PARTNERS	BPMDC–9651566	P	NEW	302419	FALLON, NV		DG
FOUR PRO PLUS PARTNERS	BPMDC–9651567	P	NEW	302420	FALLON, NV		GG
G/S RIVERTON F SETTLEMENT GROUP.	BEMDC–9750095	E	WMX702	302528	RIVERTON, WY		BG
G/S RIVERTON F SETTLEMENT GROUP.	BEMDC–9750096	E	WMX709	302535	RIVERTON, WY		CG
GOULD COMMUNICATIONS	BRMD–9750579	R	WNTF307	301932	OMAHA, NE		H3
GRAND ALLIANCE CANTON E PARTNERSHIP.	BPMDC–9200676	P	NEW	302391	CANTON, OH		
GRAND ALLIANCE KALISPELL (F) PARTNERSHIP.	BMPMDC–9750282	MP	WMX686	302513	KALISPELL, MT		BG
GRAND ALLIANCE KALISPELL (F) PARTNERSHIP.	BMPMDC–9750283	MP	WMX687	302514	KALISPELL, MT		CG
GRAND ALLIANCE STERLING (F) PARTNERSHIP.	BRMDC–20010330AEJ	R	WMX641	302469	STERLING, CO		BG
GRAND ALLIANCE STERLING (F) PARTNERSHIP.	BRMDC–20010330AEK	R	WMX637	302465	STERLING, CO		CG
GRAND MMDS ALLIANCE RICHMOND E/P PARTNER.	BEMD–9650751	E	WHT735	300960	RICHMOND, VA		EG
GRAND TELEPHONE COMPANY, INC..	BPMDC–9203812	P	NEW	302412	JAY, OK		AG
GRAND WIRELESS COMPANY, INC.	BPMD–19980721ND	P	NEW	303648	MARICAO, PR	489	H1
GRAND WIRELESS COMPANY, INC.	BPMD–19980721NE	P	NEW	304006	MARICAO, PR	489	H3
GRAND WIRELESS COMPANY, INC.	BPMD–19980721NF	P	NEW	304007	MARICAO, PR	489	H2

MDS AND MMDS APPLICATIONS BEING DISMISSED—Continued

Licensee name	File No.	Purp	Call sign	Fac ID	Transmitter city/ state	BTA	Channel list
HEARTLAND WIRELESS COMMERCIAL CHANNELS.	BPMD–19970926YJ	P	KNSD370	302807	OLTON, TX	264	FG
IMPACT MARKETING INC	BPMDC–9203337	P	NEW	302410	CHARLESTON, WV.		DG
IMPACT MARKETING INC	BPMDC–9203338	P	NEW	302411	CHARLESTON, WV.		GG
IVAN C. NACHMAN	BEMD–9651119	E	WNTH587	302023	PORTLAND, ME		H1
IVAN C. NACHMAN	BPMDH–20010913AAB	P	NEW	308117	ERIE, PA	131	H1
JCL LA JUNTA COLORADO F GRAND ALLIANCE.	BLMDC–9650228	L	WMX669	302496	LA JUNTA, CO		CG
JCL LA JUNTA COLORADO F GRAND ALLIANCE.	BLMDC–9650229	L	WMX621	302449	LA JUNTA, CO		DG
JCL LA JUNTA COLORADO F GRAND ALLIANCE.	BLMPMDC–9651552	LMP	WMX621	302449	LA JUNTA, CO		DG
JCL LA JUNTA COLORADO F GRAND ALLIANCE.	BLMPMDC–9651553	LMP	WMX669	302496	LA JUNTA, CO		CG
JERRY ALBERT PAYNE	BRMD–20010425AAP	R	WMH440	301291	MALDEN, MO		EG
JOHN DUDECK	BLNPMD–20010614AAK	LNP	WNTH475	302007	LINCOLN, NE		H2
JOHN DUDECK	BPMDH–20010913AAC	P	NEW	308118	ERIE, PA	131	H2
JONSSON COMMUNICATIONS CORPORATION.	BEMD–9651101	E	WMH705	301352	CARSON CITY, NV.		EG
JONSSON COMMUNICATIONS CORPORATION.	BEMD–9651104	E	WMH709	301354	CARSON CITY, NV.		FG
JONSSON COMMUNICATIONS CORPORATION.	BEMD–9651364	E	WNTL575	302244	CARSON CITY, NV.		HG
JONSSON COMMUNICATIONS CORPORATION.	BLMDC–20010724AAC	L	WMX625	302453	CARSON CITY, NV.		GG
JUNGON JUNG	BALMD–20010712AAM	AL	KNSC374	302921	AGUAS BUENAS, PR.	488	1
KA3B2 TELEVISION PARTNERSHIP.	BEMD–9651028	E	WNTK907	302230	OTWAY, OH		HG
KA3B2 TELEVISION PARTNERSHIP.	BRMD–20010323AAU	R	WMH869	301384	ELMIRA, NY		1
KLONDIKE DATA SYSTEMS, INC.	BPMDB–20000818DGI	P	NEW	307695	COLUMBUS, OH.		H2
KRISAR, INC	BLMPMD–20000928AAC	LMP	WMI853	301501	SOUTH BEND, IN.		FG
KRISAR, INC	BPMDH–20000818CEX	P	NEW	306998	BINGHAMTON, NY.		FG
LAWRENCE N. BRANDT	BEMD–9750025	E	WMI818	301481	BURLINGTON, VT.		EG
LAWRENCE N. BRANDT	BMPMD–9350135	MP	WMI818	301481	BURLINGTON, VT.		EG
LIBMOT COMMUNICATIONS PARTNERSHIP.	BLMPMD–9551543	LMP	WNTG452	301968	OMAHA, NE		H2
LIBMOT COMMUNICATIONS PARTNERSHIP.	BRMD–20010320ABG	R	WNTG452	301968	OMAHA, NE		H2
LIBMOT COMMUNICATIONS PARTNERSHIP.	BRMD–9750540	R	WNTG452	301968	OMAHA, NE		H2
LOIS HUBBARD	BRMD–20010402ABD	R	WMI307	301416	SOUTH BEND, IN.		EG
MARY C. SALVATO	BPMDH–20000818AFR	P	NEW	305265	BREMEN, IN		H2 H3
MARY C. SALVATO	BPMDH–20000818AFW	P	NEW	305270	WARREN, IN		H2 H3
MARY C. SALVATO	BPMDH–20000818DIL	P	NEW	307746	CASSOPOLIS, MI.		H2 H3
MDS ASSOCIATES	BLMPMD–9550388	LMP	WMI355	301435	ESCONDIDO, CA.		EG
MDS DIGITAL NETWORK, INC	BRMD–20010330ADO	R	KFI79	300022	LA HABRA, CA		1
MDS DIGITAL NETWORK, INC	BRMD–20010330AHV	R	KFF79	300020	LOS ANGELES, CA.		1
MDS DIGITAL NETWORK, INC	BRMD–20010330AHW	R	WPY40	302326	LOS ANGELES, CA.		1
MICKELSON MEDIA, INC	BRMD–20010402ABB	R	WLW907	301216	DARIEN/ BRUNSWICK, GA.		FG
MINNESOTA VALLEY TV IMPROVEMENT CORPORAT.	BMPMD–19990409VX	MP	KNSD315	303387	GRANITE FALLS, MN.	477	2A
MINNESOTA VALLEY TV IMPROVEMENT CORPORAT.	BMPMD–19990409VY	MP	KNSD312	302619	GRANITE FALLS, MN.	477	1
MULTIMICRO, INC	BEMDC–9750244	E	WMX704	302530	BELPRE, OH		CG
MULTIMICRO, INC	BEMDC–9750245	E	WMX703	302529	BELPRE, OH		AG

MDS AND MMDS APPLICATIONS BEING DISMISSED—Continued

Licensee name	File No.	Purp	Call sign	Fac ID	Transmitter city/state	BTA	Channel list
MULTIMICRO, INC	BRMD–20010323ABE	R	WMI413	301472	BELPRE, OH		FG
MWTV, INC	BLMPMD–20010821AAB	LMP	WLW894	301209	DAVENPORT, IA.		FG
NEW ENGLAND WIRELESS, INC.	BPMDH–20010420ACB	P	NEW	307884	WEST LEBANON, NH.		1
NEW MEXICO MEDIA, LTD	BRMD–20010329AFT	R	WMI325	301422	SANTA FE, NM		FG
NORTH FLORIDA MMDS PARTNERSHIP.	BEMD–9750214	E	WNTF690	301946	UKIAH, CA		H1
NORTHEAST TELECOM, INC	BRMD–9750565	R	WNTM557	302255	WATERTOWN, NY.		HG
NORTHEAST TELECOM, INC	BRMD–9750566	R	WNTM689	302273	MASSENA, NY		HG
NORTHERN RURAL CABLE TV COOPERATIVE INC.	BMPMD–20010419AAD	LMP	WMX707	302533	BATH, SD		CG
NORTHERN RURAL CABLE TV COOPERATIVE INC.	BMPMD–20010419AAE	LMP	WMX708	302534	BATH, SD		GG
NORTHERN RURAL CABLE TV COOPERATIVE, INC.	BEMD–9850693	E	WMY463	301733	BATH, SD		1
NORTHWEST SATELLITE NETWORK, INC.	BLMDC–9550393	L	WMX647	302475	YAKIMA, WA		CG
NTELOS LICENSES, INC	BRMD–20010330AIX	R	WHT736	300961	MIDLOTHIAN, VA.		FG
NUCENTRIX SPECTRUM RESOURCES, INC.	BLMPMDC–9651626	LMP	WMX655	302482	WATONGA, OK		CG
NUCENTRIX SPECTRUM RESOURCES, INC.	BLMPMDC–9651627	LMP	WMX654	302481	WATONGA, OK		BG
NUCENTRIX SPECTRUM RESOURCES, INC.	BLNPMDC–19990809AAA	LNP	WMX654	302481	WATONGA, OK		BG
NUCENTRIX SPECTRUM RESOURCES, INC.	BMAMD–20000818DMH	MA	WMX716	302542	WOODWARD, OK.		CG
NUCENTRIX SPECTRUM RESOURCES, INC.	BMAMD–20000818DMI	MA	WMX712	302538	WOODWARD, OK.		BG
NUCENTRIX SPECTRUM RESOURCES, INC.	BMD–9650621		WNEZ717	301801	NOLANVILLE, TX.		HG
NUCENTRIX SPECTRUM RESOURCES, INC.	BMPMD–9950441	MP	WMX654	302481	WATONGA, OK		BG
NUCENTRIX SPECTRUM RESOURCES, INC.	BMPMD–9950442	MP	WMX655	302482	WATONGA, OK		CG
NUCENTRIX SPECTRUM RESOURCES, INC.	BPMDB–20011129AAA	P	NEW	308152	ABILENE, TX	003	F1 F2 F3
NUCENTRIX SPECTRUM RESOURCES, INC.	BPMDB–20011129AAD	P	NEW	308157	ABILENE, TX	003	E2 E3 E4
OGDEN MDS COMPANY	BRMD–9157864	R	WFY786	300730	WATONGA, OK.		
ORION BROADCASTING SYSTEMS, INC.	BALMDC–19991112AAG	AL	WMX626	302454	ATLANTIC CITY, NJ.		CG
ORION BROADCASTING SYSTEMS, INC.	BLMPMD–19991123AAE	LMP	WHT752	300972	ATLANTIC CITY, NJ.		EG
PACIFIC TELESIS SOUTHERN VIDEO, INC.	BLMPMD–9950145	LMP	WNTD998	301910	RIVERSIDE, CA		H2
PACIFIC TELESIS SOUTHERN VIDEO, INC.	BLMPMD–9950146	LMP	WPW94	302312	RIVERSIDE, CA		1
PACIFIC TELESIS SOUTHERN VIDEO, INC.	BLMPMD–9950149	LMP	WNTL542	302243	RIVERSIDE, CA		H3
PAT BRUGGEMAN	BPMDB–20000818DGE	P	NEW	307691	COLUMBUS, OH.		H3
PAUL JACKSON ENTERPRISES	BMPMD–9750103	MP	WMY415	301705	CHATSWORTH, GA.		H3
PAUL JACKSON ENTERPRISES	BMPMD–9750104	MP	WMY416	301706	CHATSWORTH, GA.		H2
PAUL JACKSON ENTERPRISES	BMPMD–9750105	MP	WMY417	301707	CHATSWORTH, GA.		H1
PAUL JACKSON ENTERPRISES, INC.	BPMD–19970106JP	P	NEW	303703	CHATSWORTH, GA.	102	EG
PAUL JACKSON ENTERPRISES, INC.	BPMD–19970106JQ	P	NEW	303765	CHATSWORTH, GA.	102	FG
PAUL JACKSON ENTERPRISES, INC.	BPMD–19970106JR	P	NEW	303800	CHATSWORTH, GA.	102	1
ROBERT J. WALSER	BLMPMD–9850054	LMP	WLW756	301148	SAN GERMAN, PR.		EG
ROBERT J. WALSER	BMLMD–9750874	ML	WLW756	301148	SAN GERMAN, PR.		EG

MDS AND MMDS APPLICATIONS BEING DISMISSED—Continued

Licensee name	File No.	Purp	Call sign	Fac ID	Transmitter city/state	BTA	Channel list
ROBERT J. WALSER	BRMD–20010430AAC	R	WLW756	301148	SAN GERMAN, PR.		EG
RON ABBOUD	BLMD–9151617	L	WLW992	301256	OMAHA, NE		FG
RURALVISION SOUTH, INC	BEMD–9750121	E	WMX929	301638	TUCUMCARI, NM.		H1
RURALVISION SOUTH, INC	BEMD–9750122	E	WMX930	301639	TUCUMCARI, NM.		H2
RURALVISION SOUTH, INC	BEMD–9750123	E	WMX931	301640	TUCUMCARI, NM.		H3
RVS HOLDING CORPORATION	BEMD–9850304	E	WMY407	301700	TUCUMCARI, NM.		2A
RVS HOLDING CORPORATION	BEMD–9850305	E	WMY408	301701	TUCUMCARI, NM.		1
SAN DIEGO MDS COMPANY	BLMPMD–9550912	LMP	WHT559	300827	SAN DIEGO, CA.		2
SATELLITE MICROCABLE PARTNERS.	BEMD–9750219	E	WMY414	301704	ALPENA, MI		1
SKYTECH COMMUNICATIONS, INC.	BPMDC–9252931	P	NEW	302416	LAKE OZARK, MO.		
SKYTECH COMMUNICATIONS, INC.	BPMDC–9252932	P	NEW	302417	LAKE OZARK, MO.		
SOUTHWEST TELECOMMUNICATIONS COOPERATIVE.	BPMDC–9651571	P	NEW	302423	OSHKOSH, NE		CG
SOUTHWEST TELECOMMUNICATIONS COOPERATIVE.	BPMDC–9651572	P	NEW	302424	OSHKOSH, NE		DG
SOUTHWEST TELECOMMUNICATIONS COOPERATIVE.	BPMDC–9651573	P	NEW	302425	BARTLEY, NE		CG
SOUTHWEST TELECOMMUNICATIONS COOPERATIVE.	BPMDC–9651574	P	NEW	302426	BARTLEY, NE		DG
SOUTHWEST TELECOMMUNICATIONS COOPERATIVE.	BPMDC–9651575	P	NEW	302427	WRAY, CO		DG
SOUTHWEST TELECOMMUNICATIONS COOPERATIVE.	BPMDC–9651576	P	NEW	302428	WRAY, CO		AG
SOUTHWEST TELECOMMUNICATIONS COOPERATIVE.	BPMDC–9651577	P	NEW	302429	WAUNETA, NE		DG
SOUTHWEST TELECOMMUNICATIONS COOPERATIVE.	BPMDC–9651578	P	NEW	302430	WAUNETA, NE		CG
SOUTHWEST TELECOMMUNICATIONS COOPERATIVE.	BPMDC–9651579	P	NEW	302431	NORTH PLATTE, NE.		CG
SOUTHWEST TELECOMMUNICATIONS COOPERATIVE.	BPMDC–9651580	P	NEW	302432	NORTH PLATTE, NE.		DG
STEVEN A. DAVIE, M.D.	BLMPMD–9850357	LMP	WGW371	300747	ROANOKE, VA		FG
TCM HOLDINGS, INC	BALMD–980901QR	AL	KNSC928	303756	ALGOOD, TN	096	EG
TED AND NANCY PHILLIPS COMPANY.	BRMD–20010329AFY	R	WLW782	301162	SANTA FE, NM		EG
TELCOM WIRELESS CABLE TV CORP. DBA WISC.	BALMD–9950339	AL	WMH473	301294	LA CROSSE, WI.		EG
TELCOM WIRELESS CABLE TV CORP. DBA WISC.	BRMD–20010402AAS	R	WMH473	301294	LA CROSSE, WI.		EG
TELCOM WIRELESS CABLE TV CORP. DBA WISC.	BRMD–20010402AAT	R	WMH472	301293	LA CROSSE, WI.		FG
TELCOM WIRELESS CABLE TV CORP. DBA WISC.	BRMD–20010402AAU	R	WNTI731	302116	LA CROSSE, WI.		HG
TELCOM WIRELESS CABLE TV CORP. DBA WISC.	BRMDC–20010402AEF	R	WMX643	302471	LA CROSSE, WI.		D2 D3
TELCOM WIRELESS CABLE TV CORP. DBA WISC.	BRMDC–20010402AEG	R	WMX633	302461	LA CROSSE, WI.		GG
TEX-STAR WIRELESS COMM	BRMD–20010430AAD	R	WNTK882	302226	SNYDER, TX		H3
TEX-STAR WIRELESS COMMUNICATIONS ALPHA.	BRMD–20010430AAE	R	WMI373	301447	SNYDER, TX		EG
TEX-STAR WIRELESS COMMUNICATIONS BETA.	BRMD–20010430AAF	R	WMI377	301451	SNYDER, TX		FG
THOMAS SCOTT CROSSFIELD	BEMD–9651276	E	WNTI318	302085	PORTLAND, ME		H2
UNION CITY MICROVISION	BEMD–9651135	E	WNTK889	302229	UNION CITY, TN.		HG
UNION CITY MICROVISION	BEMD–9651180	E	WNTK889	302229	UNION CITY, TN.		HG
UNION CITY MICROVISION	BEMD–9651181	E	WNTK889	302229	UNION CITY, TN.		HG
UNION CITY MICROVISION	BRMD–20010330AJQ	R	WGW505	300752	UNION CITY, TN.		1

MDS AND MMDS APPLICATIONS BEING DISMISSED—Continued

Licensee name	File No.	Purp	Call sign	Fac ID	Transmitter city/state	BTA	Channel list
US WIREFREE OLYMPIA, INC	BPMDV–20010824AAC	P	NEW	308125	OLYMPIA, WA		EG FG
VIRGINIA COMMUNICATIONS, INC.	BALMD–20010306AAE	AL	KNSC269	303097	SOUTHSHORE-PORTSMOUTH, OH.	359	2A
VIRGINIA COMMUNICATIONS, INC.	BALMD–20010306AAH	AL	KNSC621	303098	PRESCOTT VALLEY, AZ.	362	2A
VIRGINIA COMMUNICATIONS, INC.	BALMD–20010306AAK	AL	KNSC373	303315	ERIE, PA	131	1
VIRGINIA COMMUNICATIONS, INC.	BEMD–9750492	E	WNTJ765	302197	HUNTINGTON, WV.		H2
VIRGINIA COMMUNICATIONS, INC.	BEMD–9750501	E	WNTJ808	302202	HUNTINGTON, WV.		H1
WALTER COMMUNICATIONS, INC.	BALMD–9551596	AL	WMH648	301339	HARRISBURG, PA.		EG
WARREN F. ACHE	BLMPMD–9750757	LMP	WLR463	301108	BROWNSVILLE, TX.		FG
WARREN F. ACHE	BLMPMD–9750912	LMP	WLR475	301112	MCALLEN, TX		FG
WBSR LICENSING CORPORATION.	BPMDC–9750234	P	NEW	302440	ROSEBURG, OR.		AG
WBSR LICENSING CORPORATION.	BPMDC–9750235	P	NEW	302441	ROSEBURG, OR.		BG
WBSY LICENSING CORPORATION.	BLMPMDC–9551639	LMP	WMX627	302455	YAKIMA, WA		DG
WILLIAMSON FAMILY, LTD	BPMDH–20010611AAG	P	NEW	307956	YOUNGSTOWN, OH.		1
WINBEAM, INC	BPMDV–20010328AGI	P	NEW	307986	ALTOONA, PA	012	EG 1 2A
WIRELESS BROADCASTING SYSTEMS OF AMERICA.	BPMDC–9750236	P	NEW	302442	COOS BAY, OR		BG
WIRELESS BROADCASTING SYSTEMS OF AMERICA.	BPMDC–9750237	P	NEW	302443	KLAMATH FALLS, OR.		CG
WIRELESS BROADCASTING SYSTEMS OF AMERICA.	BPMDC–9750238	P	NEW	302444	KLAMATH FALLS, OR.		AG
WIRELESS BROADCASTING SYSTEMS OF AMERICA.	BPMDC–9750239	P	NEW	302445	HELENA, MT		AG
WIRELESS BROADCASTING SYSTEMS OF AMERICA.	BPMDC–9750240	P	NEW	302446	HELENA, MT		BG
WIRELESS BROADCASTING SYSTEMS OF AMERICA.	BPMDC–9750241	P	NEW	302447	COOS BAY, OR		AG
WIRELESS INTERNET OF NORTH CAROLINA, INC.	BPMDB–20000818CUV	P	NEW	307457	GREENSBORO, NC.		E2 E3 E4 F1
WIRELESS INTERNET OF NORTH CAROLINA, INC.	BPMDH–20000818CLT	P	NEW	307208	GREENSBORO, NC.		E2 E3 E4 F1
WIRELESS ONE PCS, INC	BLMPMD–9750726	LMP	WFY435	300711	SAN DIEGO, CA.		1
WIRELESS ONE PCS, INC	BLMPMD–9750906	LMP	WFY435	300711	SAN DIEGO, CA.		1
WIRELESS ONE PCS, INC	BMPMD–9750727	MP	WHJ942	300790	SAN DIEGO, CA.		H1
WIRELESS SUPERVISION T.V., INC.	BPMDC–9201314	P	NEW	302402	KLAMATH FALLS, OR.		DG
WIRELESS SUPERVISION T.V., INC.	BPMDC–9201315	P	NEW	302403	KLAMATH FALLS, OR.		GG
WORLDCOM BROADBAND SOLUTIONS, INC.	BLMPMDB–9950144	LMP	WPW94B01	200045	GRAND TERRACE, CA.		1
WORLDCOM BROADBAND SOLUTIONS, INC.	BLMPMDB–9950147	LMP	WNTD998B01	200043	GRAND TERRACE, CA.		H2
WORLDCOM BROADBAND SOLUTIONS, INC.	BLMPMDB–9950148	LMP	WNTL542B01	200044	GRAND TERRACE, CA.		H3
WORLDCOM BROADBAND SOLUTIONS, INC.	BRMD–20010402AAF	R	WKR26	301018	NEW ORLEANS, LA.		1
WORLDCOM BROADBAND SOLUTIONS, INC.	BRMD–9159092	R	WOF49	302293	CHICAGO, IL		1
WORLDWIDE WIRELESS, LP	BPMD–20000817AAK	P	NEW	305381	ELMIRA, NY	127	FG
YOUNG COMMUNICATIONS	BRMD–9750578	R	WNTF452	301936	OMAHA, NE		H1

Applicant/Licensee	File No./Call sign	Pleading type	Petitioner (if not applicant)	Filing date
Amarillo Independent School District	BPLIF–19910722DD	Petition to Deny	United States Wireless Cable, Inc.	9/20/91

Applicant/Licensee	File No./Call sign	Pleading type	Petitioner (if not applicant)	Filing date
Amarillo Independent School District	BPLIF–19910722DE	Informal objection	United States Wireless Cable, Inc.	9/2/92
Armstrong State College	BPLIF951020VB	Petition to Deny	Wireless One, Inc.	1/8/97
ASC Communications, Inc.	14693–CM–P–83	Petition for Declaratory Ruling.		7/25/94
ASC Communications, Inc.	WMH541	Petition for Declaratory Ruling.		7/25/94
ASC Communications, Inc.	BMPMD–9650762	Petition for Relief	Pacific Telesis Enterprises	1/17/96
ASC Communications, Inc.	WMH541	Petition for Relief	Pacific Telesis Enterprises	1/17/96
ASC Communications, Inc.	19991202AAE	Waiver Request		12/2/99
ASC Communications, Inc.	WMH541	Waiver Request		12/2/99
Catholic Diocese of Caguas	BPLIF–19951020WN	Petition to Deny	Catholic Diocese of Caguas	7/14/98
Champlain College	BPIF–19911010DS	Petition to Deny	Satellite Signals of New England, Inc.	1/13/92
Concord Community School	92071DB	Petition to Deny	Jones Community School	6/13/93
Emerson College	BPLIF–960919AA	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	3/14/97
Emerson College	WHR758	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	10/9/97
Emerson College	960919AB	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	10/9/97
Hispanic Information and Telecommunications Network, Inc (Tiverton, RI).	BPIFH20000818AJO	Petition to Deny	Eastern New England Licensee, Inc.	3/30/01
Hispanic Information and Telecommunications Network, Inc (Tiverton, RI).	WLX690	Petition to Deny	Eastern New England Licensee, Inc.	3/30/01
Hispanic Information and Telecommunications Network, Inc (Tiverton, RI).	BPIFH–20000818AJO; BPIFH20000818AEK	Petition to Deny	Northeastern University	4/2/01
Hispanic Information and Telecommunications Network, Inc. (Tiverton, RI).	BPIFH–20000818AJO	Petition to Deny	BCTV, Inc.	6/25/01
MDS Digital Network, Inc. (Los Angeles, CA).	BRMD–20010330ADO	Petition to Deny	Southern Wireless Video, Inc.	8/1/01
MDS Digital Network, Inc. (Los Angeles, CA).	BRMD–20010330AHV	Petition to Deny	Southern Wireless Video, Inc.	8/1/01
MDS Digital Network, Inc. (Los Angeles, CA).	BRMD–20010330AHW	Petition to Deny	Southern Wireless Video, Inc.	8/1/01
MDS Digital Network, Inc. (Los Angeles, CA).	KF179	Petition to Deny	Southern Wireless Video, Inc.	8/1/01
MDS Digital Network, Inc. (Los Angeles, CA).	KFF79	Petition to Deny	Southern Wireless Video, Inc.	8/1/01
MDS Digital Network, Inc. (Los Angeles, CA).	WPY40	Petition to Deny	Southern Wireless Video, Inc.	8/1/01
Mesa Unified School District #4	BPLIF–19951020QF	Petition to Deny	Instructional Telecommunications Foundation, Inc.	9/8/97
Norwich University	BPLIF–911008DD	Petition to Deny	Satellite Signals of New England, Inc.	1/13/92
Reid Institute	BPLIF–19951020HN	Petition to Deny	Instructional Telecommunications Foundation, Inc.	7/11/97
Richmond Hill Christian Academy	BPLIF–951020PH	Petition to Deny	The Board of Public Education for the City of Savannah and County of Chatham and Wireless Cable of Florida, Inc.	8/6/98
Robert Walser	50054–CM–P–98	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	5/15/98
St. Michael's College	BPIF–19911008DQ	Petition to Deny	Satellite Signals of New England, Inc.	1/13/92
Technical Trade Institute	9501020SH	Informal Objection	Hispanic Information and Telecommunications Network, Inc.	6/16/97
Tex-Star Wireless Communications	BLMD–9350779	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97
Tex-Star Wireless Communications	BLMD–9350780	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97
Tex-Star Wireless Communications	BLMD–9450245	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97
Tex-Star Wireless Communications	WMI373	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97
Tex-Star Wireless Communications	WMI377	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97

Applicant/Licensee	File No./Call sign	Pleading type	Petitioner (if not applicant)	Filing date
Tex-Star Wireless Communications	WNTK882	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97
Tex-Star Wireless Communications	BRMD–20010430AAE	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
Tex-Star Wireless Communications	BRMD–20010430AAF	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
Tex-Star Wireless Communications	BRMD–20010430AAD	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
Tex-Star Wireless Communications	WMI373	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
Tex-Star Wireless Communications	WMI377	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
Tex-Star Wireless Communications	WNTK882	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
Trocki Hebrew Academy of Atlantic County.	BPLIF–951020BH	Petition to Deny	Instructional Telecommunications Foundation, Inc.	5/6/98
Trocki Hebrew Academy of Atlantic County.	WHR527	Petition to Deny	Instructional Telecommunications Foundation, Inc.	5/6/98
Western New Mexico University	BMPLIF–951019BL	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	7/17/97

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging (AoA)

[Program Announcement No. AoA–03–07]

Fiscal Year 2003 Consolidated Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Fiscal Year 2003 AoA Consolidated Program Announcement of availability of funds and request for applications for thirteen (13) priority areas.

SUMMARY: The Administration on Aging announces that under this consolidated program announcement it will hold a competition for grant awards and cooperative agreements. Below is the list of the thirteen priority areas identified by number, letter and name: A separate application must be submitted if application is made for more than one priority area.

AoA–03–07 A: Alzheimer's—National Call Center

AoA plans to fund one (1) cooperative agreement at a federal share of approximately $963,500 per year for a project period up to 3 years. The purpose of this project is to implement and operate a National Alzheimer's Call Center. The Call Center will be a national information, counseling and assistance program coordinated through a national network of community-based organizations that have the capacity to serve persons affected by Alzheimer's Disease.

The award is a cooperative agreement because the Administration on Aging will be substantially involved in the development and execution of the activities of the grantee. The Administration on Aging shall carry out the following activities under this cooperative agreement: collaborate with the National Alzheimer's Call Center in the development, modification and execution of the project work plan; provide technical advice in the development of promotional and technical assistance materials; and provide coordination between the main program grantee and other technical assistance and evaluation components.

AoA–03–07 B: Eldercare Locator Program and the National Aging Information & Referral Support Center

AoA plans to fund one cooperative agreement through this competition. The project will be funded at a federal share of approximately $1,175,000 per year for a project period up to five (5) years.

The AoA will fund the cooperative agreement to continue and explore expansion of the Eldercare Locator, a program that links older persons and their caregivers to Older Americans Act (OAA) programs and services. In addition, the project will continue operation of the National Aging Information & Referral Support Center to provide technical assistance and training to the aging network to improve and enhance OAA information & referral systems.

The award is a cooperative agreement because the Administration on Aging will be substantially involved in the development and execution of the activities of the grantee. The Administration on Aging shall carry out the following activities under this cooperative agreement: collaborate with the Eldercare Locator program and the Support Center in the development, modification and execution of the project work plan; provide technical advice in the development of promotional and technical assistance materials; and provide consultation in identifying emerging aging and information & referral issues to better guide the work of the project.

AoA–03–07 C: Evidence-Based Prevention Program

AoA plans to make grant awards for six (6) to eight (8) Evidence-Based Prevention Program Grants for the Elderly at a federal share of approximately $200,000 to $250,000 per year for a project period up to 3 years. The purpose of the Evidence-Based Prevention Program Grants is to demonstrate how the Aging Services Network, through its Community Aging Services Provider organizations in partnership with other important community organizations, can maximize the health and quality of life for older persons by translating previous research into evidence-based intervention models that prevent or delay the progression of disability and/or disease.

AoA–03–07 D: Evidence-Based Prevention Program for the Elderly—National Resource Center

AoA plans to fund one cooperative agreement through this competition. The project will be funded at a federal

share of approximately $500,000 per year for a project period up to three years. This grant will be issued as a cooperative agreement because AoA anticipates having substantial involvement with the recipient during the performance of the funded activities. The involvement may include collaboration, participation, or intervention in the funded activities. The types of activities funded under the cooperative agreement include technical assistance to AoA demonstration grantees in the development of evidence-based disability and disease prevention programs and practices; assistance to additional parts of the aging network in the development of similar programs; development of a comprehensive knowledge base focused on intervention models for the elderly that prevent the progression of disability; identification and/or construction of manuals and resources to help implement related programs; assistance to AoA in developing and hosting a National Conference on Evidence-Based Disability and Disease Prevention for the Elderly and, other related tasks.

AoA–03–07 E: Family Friends

AoA plans to fund one cooperative agreement through this competition. It is anticipated that approximately $980,584 is available as the federal share of the project, per year for a project period up to three (3) years. The award is a cooperative agreement because the Administration on Aging will be substantially involved in the development and execution of the activities of the grantee. The Administration on Aging shall carry out the following activities under this cooperative agreement: collaborate with the Center in the development, modification and execution of the Center work plan, including the Center's plan for evaluating its activities and the local projects; provide technical advice in the development of technical assistance and informational materials; and provide consultation in identifying emerging issues and in developing and maintaining a national network of Family Friends projects. The Center shall carry out the following activities under this cooperative agreement: collaborate with the Administration on Aging in the development, modification, and execution of the Center work plan; assist the Administration on Aging in developing and sustaining the national network of Family Friends projects and in responding to inquiries from the field; and evaluate the impact of Center activities and the local projects.

The applicant must include four major areas that are identified here with recommended funding amounts:

Technical Assistance: $250,000; Model Projects: $500,000; Helping At-Risk Youth: $130,584; Evaluation: $100,000.

The purpose of the grant award is to support a National Center for Family Friends to provide training, technical assistance and guidance to local Family Friends projects; further build and support a national system of Family Friends projects by soliciting and awarding grants through a competition for model projects, support projects that foster innovative approaches/models for expanding the Family Friends program to at-risk youth; conduct a program evaluation; and disseminate information.

AoA–03–07 F: Health Disparities Among Minority Elderly Individuals—Technical Assistance Centers

AoA plans to make approximately five grant awards for new projects through this competition, for a total of $932,598 in FY 2003. Each project should focus on health disparities in one of the following four major racial and ethnic minority groups: African American (1 project @ $149,025); Native American and Alaska Native (1 project @ $129,155); persons of Hispanic origin (up to 2 projects @ $149,025 each); and Asian American and Pacific Islander (1 project up to $356,369). The projects will be funded for a project period up to three (3) years. The grant awards will develop culturally and linguistically front line health promotion and disease prevention strategies in the minority groups. Projects will develop practical, nontraditional, community-based interventions for reaching older individuals who experience barriers to access that can be attributed to language and low literacy as well as other barriers directly related to cultural diversity.

AoA–03–07 G: National Center on Elder Abuse

AoA plans to fund one cooperative agreement at $809,703 per year, for a project period up to three (3) years. The National Center on Elder Abuse (NCEA) will incorporate the latest technology to generate and disseminate knowledge that can build and strengthen elder rights networks and enhance the effectiveness of state and community-based elder abuse prevention and intervention programs. It will serve as a national clearinghouse of information on all forms of elder abuse, including physical, psychological, sexual and financial abuse; neglect and self-neglect. NCEA will tailor its activities and work products to meet the special needs of disadvantaged populations, including limited-English speaking individuals.

The award is a cooperative agreement because the Administration on Aging will be substantially involved in the development and execution of the activities of the grantee. The Administration on Aging shall carry out the following activities under this cooperative agreement: collaborate with the Center in the development, modification and execution of the Center work plan; provide technical advice in the development of elder abuse prevention informational materials; and provide consultation in identifying emerging elder abuse issues and in developing and maintaining a system of state and community-based elder rights networks made up of service providers funded under the Older Americans Act.

AoA–03–07 H: Nutrition, Physical Activity and Aging—National Resource Center

AoA plans to fund one cooperative agreement through this competition. The project will be funded at a federal share of approximately $480,000 per year for a project period up to three (3) years. The purpose of this cooperative agreement is to enhance knowledge about the health promotion/disease prevention aspects of nutrition and physical activity for older adults and thereby increase and improve the delivery of these services to them throughout the aging network.

AoA and the Center will work cooperatively in the development of the Center's plan of work; in the award process and implementation of subcontracts and of physical activity and nutrition mini-grants for *USA on the Move: Steps to Healthy Aging;* as well as with other Center activities. The AoA will work collaboratively with the Center to develop a system to set priorities for research, materials development, training and technical assistance, and/or dissemination. There will be substantial AoA involvement in determining guidance regarding *The Dietary Guidelines, The Dietary Reference Intakes,* and implementation of food safety and food service administration. Whenever possible, AoA will share with the Center information about other Federally supported projects and Federal activities relevant to its areas of primary concern.

AoA–03–07 I: Older Indians, Alaska Natives and Native Hawaiians—National Resource Centers

AoA plans to fund two (2) cooperative agreements under this competition. Each Center will be funded at a federal share of approximately $345,000 per year, for a project period up to three (3) years.

The Centers will focus on issues and concerns affecting individuals who are older Indians, Alaska Natives and Native Hawaiians. The primary goal of these Centers is to enhance knowledge about older Native Americans and thereby increase and improve the delivery of services to them. With this goal in mind, the Centers will concentrate on the development and provision of technical information and expertise to Indian tribal organizations, Native American communities, educational institutions including Tribal Colleges and Universities, and professionals and paraprofessionals in the field. Each Center must have a national focus and direct its resources to one or more of the areas of primary concern specified in the full Program Announcement. In addition, each Center must provide short term applied research, education, and dissemination of information and promote the collaboration between Titles VI and III of the OAA, as amended, as well as with other relevant Federal programs.

This award is a cooperative agreement because the Administration on Aging (AoA) will be substantially involved in the development and execution of the activities of the grantees. The AoA and the Centers will work cooperatively in the development of Center agendas and awarding of subcontracts. The AoA will work with the Centers to develop a system to set priorities for research, training and technical assistance, education, and/or dissemination as well as addressing AoA's priority areas. Whenever possible, AoA will share with the Centers information about other federally supported projects and Federal activities relevant to its areas of primary concern.

AoA–03–07 J: Pension Information and Counseling Projects—Regional

AoA plans to fund two (2) regional pension counseling and information grants through this competition. Each regional project will be funded at a federal share of approximately $150,000 per year, for a project period up to three (3) years.

The grant awards are to assist older workers and retirees and their families to maneuver their way through the pension maze. The AoA grants are to develop demonstration projects that will provide counseling and information to better help these individuals understand and enforce their pension rights. The projects should provide outreach, information, counseling, referral, and other assistance regarding pensions and other retirement income benefits from private (pre-, post-, and non-ERISA plans) as well as federal and state government pension systems. The AoA expects these projects to build on the experience of the existing and previously funded projects and demonstrations. Specifically, the AoA expects applicants to propose the implementation and improvement of the most appropriate and effective methods to ensure that Americans eligible for pension and other retirement income benefits have the requisite knowledge, information and counseling to fully exercise their rights and entitlements.

AoA–03–07 K: Pension Technical Assistance Project—National

AoA plans to fund one (1) national technical assistance grant that will strengthen the role of its Pension Counseling and Information Projects and encourage coordination between the projects, State and Area Agencies on Aging and legal services providers for older Americans by providing substantive legal training, technical assistance and programmatic consultation. The project will also design and develop a national Pension Assistance Call Center to provide information and referral services to anyone in the country with pension or retirement income plan questions or problems. The project will be funded at a federal share of approximately $400,000 per year, for a project period up to three (3) years. The technical assistance project will serve two primary functions. First, the project will provide substantive legal training and technical assistance, as well as programmatic consultation to the Pension Counseling and Information Project network, State and Area Agencies on Aging, and legal services providers for older Americans. Through this function, the project will strengthen the presence and effectiveness of the pension counseling network by coordinating and encouraging close cooperation among the Pension Counseling Projects, government pension agencies, private pension professionals and the media. Second, the project will design and develop a comprehensive electronic database of pension and retirement income-related information, government agencies, private professionals and other resources to serve as the underpinning of a national toll-free pension assistance call center. The project will also develop and test an expert system to manage the information call center that operators will use in assisting callers. The project will then test these systems for usability and, in conjunction with AoA, staff, market, and initiate the call center service to Americans with pension or retirement income plan questions or problems.

AoA–03–07 L: Retirement Planning and Assistance for Women

AoA plans to award one cooperative agreement to support a National Resource Center on Women and Retirement. The federal share will be up to $248,376 per year, for a project period up to three (3) years. The Center will incorporate the latest technology to generate and disseminate knowledge in appropriately packaged forms that can assist women, especially low-income women and women of color, to build and strengthen their capacity to plan for their economic security in later life. The Center will serve as a national clearinghouse of tools and information on retirement planning and related financial materials. The Center will tailor its activities and work products to meet the special needs of disadvantaged women and their families, including limited-English speaking individuals.

The award will be made in the form of a cooperative agreement because the Administration on Aging will be substantially involved in the development and execution of the activities conducted by the grantee. Accordingly, under this cooperative agreement, AoA shall carry out the following activities: collaborate with the Center on the development, modification and execution of the Center work plan; provide technical advice on the identification, adaptation and development of financial and retirement planning informational materials for women; and consult on the identification of emerging issues, potential strategies and their impact nationwide.

AoA–03–07 M: Senior Legal Services—Enhancement of Access

AoA plans to fund approximately three (3) to four (4) new statewide grants through this competition. Each project will be funded at a federal share of approximately $100,000–$150,000 per year, for a project period up to three (3) years, the amount roughly proportionate to the state's senior population and the availability of federal funds.

These grants provide states with a cost-effective way to increase the number of seniors who receive legal

assistance. Building upon methods previously tested under Title IV of the OAA, such as statewide legal hot lines, self-help offices, interactive websites, and collaborative efforts, these grants can enhance access to legal services for underserved seniors.

Legislative authority: The Older Americans Act, Public Law 106–501 (Catalog of Federal Domestic Assistance 93.048, Title IV and Title II, Discretionary Projects).

Eligibility for grant awards and other requirements: Public and/or nonprofit agencies and organizations, including faith-based and community-based organizations, are eligible to apply for the following priority areas:

AoA–03–07 B: Eldercare Locator Program and the National Aging Information & Referral Support Center

AoA–03–07 L: Retirement Planning and Assistance for Women

AoA–03–07 M: Senior Legal Services—Enhancement of Access

State or area agencies on aging, and nonprofit organizations, including community-based and faith-based organizations, are eligible to apply for the following priority areas:

AoA–03–07 J: Pension Information and Counseling Projects—Regional

AoA–03–07 K: Pension Technical Assistance Project—National

Public and/or nonprofit agencies and national organizations, including faith-based organizations, are eligible to apply for the following priority area:

AoA–03–07 F: Health Disparities Among Minority Elderly Individuals—Technical Assistance Centers

Public and/or nonprofit agencies, organizations, or institutions, including faith-based organizations, are eligible to apply for the following priority areas:

AoA–03–07 E: Family Friends

AoA–03–07 G: National Center on Elder Abuse

Local public and/or nonprofit agencies and organizations, including faith-based and community-based organizations are eligible to apply for the following priority area:

AoA–03–07 C: Evidence-Based Prevention Program

Nonprofit agencies and organizations, including faith-based and community-based organizations, are eligible to apply for the following priority area:

AoA–03–07 A: Alzheimer's—National Call Center

National nonprofit organizations, including faith-based organizations, are eligible to apply for the following priority area:

AoA–03–07 D: Evidence-Based Prevention Program for the Elderly—National Resource Center

Institutions of higher education are eligible to apply for the following priority areas:

AoA–03–07 H: Nutrition, Physical Activity and Aging—National Resource Center

AoA–03–07 I: Older Indians, Alaska Natives and Native Hawaiians—National Resource Centers

Special Qualifications Required

AoA–03–07 A: Alzheimer's—National Call Center

Applicants must involve community-based organizations in the operation of the National Alzheimer's Call Center to ensure local, on-the-ground capacity to respond to emergency and on-going needs of Alzheimer's patients, their families, and informal caregivers.

AoA–03–07 B: Eldercare Locator Program and the National Aging Information & Referral Support Center

Applicants must demonstrate current knowledge of the Eldercare Locator, extensive knowledge in providing information & assistance to older persons and their caregivers, extensive knowledge of the Aging Services Network, and experience in providing training and technical assistance to that Network.

AoA–03–07 C: Evidence-Based Prevention Program

Applicants must be local public and/or nonprofit service providers that primarily provide home and community-based social services to older persons and are funded at least in part through the Older Americans Act.

AoA–03–07 D: Evidence-Based Prevention Programs for the Elderly—National Resource Center

Applicants must demonstrate expertise in working with Community Aging Service Programs to develop and implement evidence-based prevention programs for the elderly. The organization should have direct experience in: applied research and evaluation with older adults; providing training and technical assistance at all levels of the aging network; developing of documents to support aspects of disease and disability prevention for older adults within the context of the aging network and health care systems; compiling, analyzing, synthesizing, and disseminating information on disease and disability prevention among older adults to a diverse audience, including social and health professionals.

AoA–03–07 E: Family Friends

Applicants must demonstrate experience in providing services to senior volunteers and to children or youth who are disabled or at-risk.

AoA–03–07 G: National Center on Elder Abuse

Applicants must demonstrate a proven track record of expert knowledge concerning the operation and organization of elder abuse programs at national, state, and local levels, as well as the requisite organizational capacity to carry out the activities of the Center on a national scale.

AoA–03–07 H: Nutrition, Physical Activity and Aging—National Resource Center

Applicants must demonstrate a direct experience in conducting applied research on nutrition and physical activity for older adults, developing technical assistance materials for the aging network in these areas, training and technical assistance to all levels of the aging network, and implementing nutrition and physical activity related demonstration programs across the continuum of care.

AoA–03–07 I: Older Indians, Alaska Natives and Native Hawaiians—National Resource Centers

Applicants must have experience conducting research and assessment on the needs of older individuals. Current Resource Centers are also eligible to apply.

AoA–03–07 J: Pension Information and Counseling Projects—Regional

Applicants must have a proven record of providing pension counseling and/or other services directly related to the retirement income security of older individuals. Applicants providing these services to Native Americans are encouraged to apply. While the term ''regional'' is not specifically defined, it will generally be interpreted to mean two (2) or more states; for applicants proposing a single-state ''region'' additional justification will be required. Preference in awarding funds will be given to applicants who are experienced in providing statewide or regional pension and retirement income benefits counseling and information services.

AoA–03–07 K: Pension Technical Assistance Project—National

Applicants must have a proven record of providing pension counseling and/or other services directly related to the retirement income security of older individuals. Applicants providing these services to Native Americans are encouraged to apply.

AoA–03–07 L: Retirement Planning and Assistance for Women

To be considered for funding, applicants must demonstrate extensive knowledge and a proven track record of expertise concerning the nature of financial and retirement education, economic security and women, and strategies for communicating complex information to low income women and women of color in a nationwide arena.

AoA–03–07 M: Senior Legal Services—Enhancement of Access

To be considered for funding, applicants must be experienced in providing legal assistance to older persons.

Non-Federal Match

Grantees for all thirteen priority areas are required to cover at least 25% of the total program costs from non-federal cash or in-kind resources. Grantees must contribute at least one (1) dollar in non-federal cash or in-kind resources for every three (3) dollars received in federal funding.

Executive Order 12372 is not applicable to these grant applications.

Screening Criteria

In order for an application to be reviewed, it must meet the following screening requirements:

1. Applications must be postmarked by midnight, August 15, 2003, or hand-delivered by 5:30 p.m. Eastern Time on August 15, 2003, or submitted electronically by midnight, August 15, 2003. Electronic submissions must be sent to *http://www.aoa.gov/egrants*.

2. The Project Narrative section of the Application must be double-spaced, on single-sided 8½″ x 11″ plain white paper with 1″ margins on both sides, and a font size of not less that 11.

3. The Project Narrative must not exceed 25 pages.

Review of Applications

Applications will be evaluated against the following criteria: Approach, Work Plan and Activities (30 points); Project Outcomes, Evaluation and Dissemination (30 points); Purpose and Need for Assistance (20 points); Level of Effort (20 points).

DATES: The deadline date for the submission of applications for all priority areas is August 15, 2003.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, by calling (202) 357–3440, or online at *http://www.aoa.gov/egrants*.

Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson. Please identify the application by priority area (*e.g.*. AoA–03–07 A). Applications may be delivered to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Margaret Tolson (identify priority area).

If you elect to mail or hand deliver your application you must submit one original and two copies of the application; an acknowledgement card will be mailed to applicants. Instructions for electronic mailing of grant applications are available at *http://www.aoa.gov/egrants/*.

SUPPLEMENTARY INFORMATION: All grant applicants are encouraged to obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/*.

FOR FURTHER INFORMATION CONTACT: *AoA–03–07 A: Alzheimer's—National Call Center*—Lori Stalbaum (202) 357–3452; e-mail *Lori.Stalbaum@aoa.gov*.

AoA–03–07 B: Eldercare Locator Program and the National Aging Information & Referral Support Center—Sherri Clark (202) 357–3506; e-mail *sherri.clark@aoa.gov*.

AoA–03–07 C: Evidence-Based Prevention Program—Donald Grantt, (202) 357–3447; e-mail *Donald.Grantt@aoa.gov*.

AoA–03–07 D: Evidence-Based Prevention Program for the Elderly—National Resource Center—Donald Grantt, (202) 357–3447; e-mail *Donald.Grantt@aoa.gov*.

AoA–03–07 E: Family Friends—Joyce Hubbard (202) 357–3462; e-mail *joyce.hubbard@aoa.gov*.

AoA–03–07 F: Health Disparities among Minority Elderly Individuals—Technical Assistance Centers—Dianne Freeman (202) 357–3536; e-mail *dianne.freeman@aoa.gov*.

AoA–03–07 G: National Center on Elder Abuse—Brandt Chvirko (202) 357–3535; e-mail *brandt.chvirko@aoa.gov*.

AoA–03–07 H: Nutrition, Physical Activity and Aging—National Resource Center—Jean Lloyd (202) 357–3582; e-mail *jean.lloyd@aoa.gov*.

AoA–03–07 I: Older Indians, Alaska Natives and Native Hawaiians—National Resource Centers—Margaret Graves (202) 357–3502; e-mail *margaret.graves@aoa.gov*.

AoA–03–07 J Pension Information and Counseling Projects—Regional—Valerie Soroka (202) 357–3531; e-mail *valerie.soroka@aoa.gov*.

AoA–03–07 K: Pension Technical Assistance Project—National—Valerie Soroka (202) 357–3531; e-mail *valerie.soroka@aoa.gov*.

AoA–03–07 L: Retirement Planning and Assistance for Women—Dianne Freeman (202) 357–3536; e-mail *dianne.freeman@aoa.gov*.

AoA–03–07 M: Senior Legal Services—Enhancement of Access—Valerie Soroka (202) 357–3531; e-mail *valerie.soroka@aoa.gov*.

Dated: July 10, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

AoA Consolidated Program Announcement

Grant opportunity	Application deadline	Who may apply (In addition, note special qualifications required)	Maximum award	Maximum projected period	Estimated number of awards
A. Alzheimer's—National Call Center (CFDA 93048).	Aug. 15, 2003 ...	Nonprofit agencies and organizations including faith-based and community-based organizations.	$963,500	36 months	1

AoA Consolidated Program Announcement—Continued

Grant opportunity	Application deadline	Who may apply (In addition, note special qualifications required)	Maximum award	Maximum projected period	Estimated number of awards
B. Eldercare Locator Program and the National Aging Information & Referral Support Center (CFDA 93048).	Aug. 15, 2003	Public and/or nonprofit agencies and organizations, including faith-based and community-based organizations.	$1,175,000	60 months	1
C. Evidence-Based Prevention Program (CFDA 93.048).	Aug. 15, 2003	Local public and/or nonprofit agencies and organizations, including faith-based and community-based organizations.	$250,000	36 months	6–8
D. Evidence-Based Prevention Program for the Elderly—National Resource Center (CFDA 93.048).	Aug. 15, 2003	National nonprofit organizations, including faith-based organizations.	$500,000	36 months	1
E. Family Friends (CFDA 93.048).	Aug. 15, 2003	Public and/or nonprofit agencies and organizations, including faith-based and community-based organizations.	$980,584	36 months	1
F. Health Disparities among Minority Elderly Individuals—Technical Assistance Centers (CFDA 93.048).	Aug. 15, 2003	Public and/or nonprofit agencies and national organizations, including faith-based organizations.	$932,598 total; range $129,000–$356,000.	36 months	5
G. National Center on Elder Abuse (CFDA 93.048).	Aug. 15, 2003	Public and/or nonprofit agencies, organizations, or institutions, including faith-based organizations.	$809,703	36 months	1
H. Nutrition, Physical Activity and Aging—National Resource Center (CFDA 93.048).	Aug. 15, 2003	Institutions of Higher Education	$480,000	36 months	1
I. Older Indians, Alaska Natives and Native Hawaiians—National Resource Centers (CFDA 93.048).	Aug. 15, 2003	Institution of Higher Education	$345,000	36 months	2
J. Pension Information and Counseling Projects—Regional (CFDA 93.048).	Aug. 15, 2003	State or area agencies on aging, and nonprofit organizations, including community-based and faith-based organizations.	$150,000	36 months	2
K. Pension Technical Assistance Project—National (CGDA 93l.048).	Aug. 15, 2003	State or area agencies on aging, and nonprofit organizations, including community-based and faith-based organizations.	$400,000	36 months	1
L. Retirement Planning and Assistance for Women (CFDA 93.048).	Aug. 15, 2003	Public and/or nonprofit agencies and organizations, including faith-based and community-based organizations.	$248,376	36 months	1
M. Senior Legal Services—Enhancement of Access (CFDA 93.048).	Aug. 15, 2003	Public and/or nonprofit agencies and organizations, including faith-based and community-based organizations.	$100,000 to $150,000	36 months	4

[FR Doc. 03–17914 Filed 7–14–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–92]

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: List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products (OMB No. 0920–0210)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The Comprehensive Smoking Education Act of 1984 (15 U.S.C. 1336 or Pub. L. 98–474) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of Health and Human Services (HHS) with a list of ingredients added to tobacco in the manufacture of cigarettes. This legislation also authorizes HHS to undertake research, and submit an annual report to Congress (as deemed appropriate) discussing the health effects of cigarette ingredients. HHS has delegated responsibility for the implementation of this Act to CDC's Office on Smoking and Health (OSH). OSH has collected ingredient reports on cigarette products since 1986. Cigarette smoking is the leading preventable cause of premature death and disability in our Nation. Each year more than 400,000 premature deaths occur as the result of cigarette smoking related diseases. The costs to respondents is their time to complete the survey.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Cigarette Manufacturers	38	1	37	1418
Total				1418

Dated: July 9, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–17810 Filed 7–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–93]

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: List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products (OMB No. 920–0338—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401 *et seq.*, Pub. L. 99–252) requires each person who manufactures, packages, or imports smokeless tobacco (SLT) products to provide the Secretary of Health and Human Services (HHS) with a list of ingredients added to tobacco in the manufacture of smokeless tobacco products. This legislation also authorizes HHS to undertake research, and submit an annual report to the Congress (as deemed appropriate), discussing the health effects of ingredients in smokeless tobacco products. HHS delegated responsibilities for the implementation of this Act to CDC's Office on Smoking and Health (OSH). The oral use of SLT represents a significant health risk which can cause cancer and a number of non-cancerous oral conditions, and can lead to nicotine addiction and dependence. Furthermore, SLT use is not a safe substitute for cigarette smoking. The total cost to respondents is their time to complete survey.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Smokeless Tobacco Manufacturers	6	1	42	254
Total				254

Dated: July 9, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–17811 Filed 7–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–94]

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: National Nursing Home Survey (NNHS) 2004–2007 (OMB No. 0920–0353)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Section 306 of the Public Health Service Act states that the National Center for Health Statistics ''shall collect statistics on health resources * * * [and] utilization of health care, including utilization of * * * services of hospitals, extended care facilities, home health agencies, and other institutions.'' The data system responsible for collecting this data is the National Health Care Survey (NHCS). The National Nursing Home Survey (NNHS) is part of the Long-term Care Component of the NHCS. The NNHS was conducted in 1973–74, 1977, 1985, 1995, 1997, and 1999. NNHS data describe a major segment of the long-term care system and are used extensively for health care research, health planning and public policy. NNHS provides data on the characteristics of nursing homes (*e.g.* Medicare and Medicaid certification, ownership, membership in chains/HMO/hospital systems), residents (*e.g.* demographics, functional status, services received, diagnoses, sources of payment), and staff (*e.g.* staffing mix, turnover, benefits, training, education). The survey provides detailed information on utilization and staffing patterns, and quality of care variables that is needed in order to make accurate assessments of the need for and effects of changes in the provision and financing of long-term care for the elderly. The availability and use of long-term care services are becoming an increasingly important issue as the number of elderly increases and persons with disabilities live longer. Equally as important is ensuring the adequacy and availability of the long-term care workforce. Data from the NNHS have been used by federal agencies, professional organizations, private industry, and the media.

NCHS plans to conduct the next NNHS in March-June 2004 with a repeat of the survey in 2006. This national survey follows a pretest of forms and procedures conducted in June-July 2003. The data collection forms and procedures have been extensively revised from the previous NNHS. The 2004 NNHS will be based on computer-assisted personal interview (CAPI) and computer-assisted telephone interview (CATI) methodologies. The total cost to respondents is their time to complete the survey.

Respondents	No. of respondents	No. of responses per respondent	Average burden per responses (in hrs.)	Total burden (in hrs.)
Facility Questionnaire	3,000	1	20/60	1,000
Nursing Home Staff Questionnaire	3,000	1	2.5	7,500
Current/Discharge Resident Sampling List	3,000	1	20/60	1,000
Current Resident Questionnaire	3,000	8	25/60	10,000
Discharged Resident Questionnaire	3,000	8	25/60	10,000
Direct Care Worker Sampling List	3,000	1	10/60	500
Direct Care Worker Questionnaire	1,800	4	30/60	3,600
Total				33,600

Dated: July 9, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–17812 Filed 7–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03188]

Emerging Infections Program—FY03 Competitive Supplement; Notice of Availability of Funds

Application Deadline: August 14, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act sections 301(a) [42 U.S.C. 241(a)], 317(k)(1) [42 U.S.C. 247b(k)(1)], and 317(k)(2) [42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the

availability of fiscal year (FY) 2003 funds for competitive supplemental awards to current grantees of the Emerging Infections Programs (EIPs) cooperative agreements. This program addresses the ''Healthy People 2010'' priority areas of Immunization and Infectious Diseases.

These supplemental funds are available to assist grantees in developing and conducting projects in the following two areas:

Project A—Surveillance for Severe Acute Respiratory Syndrome (SARS) and Severe Pneumonia Syndrome

Project B—Enhanced surveillance for Viral Hepatitis

The purpose of these supplemental awards is to complement activities associated with the established EIP. EIPs are population-based centers designed to assess the public health impact of emerging infections and to evaluate methods for their prevention and control. This program will assist local, state, and national efforts to conduct surveillance and applied epidemiologic and laboratory research in emerging infectious diseases, and it will enhance bioterrorism preparedness.

Project A—Surveillance for SARS and Severe Pneumonia Syndrome Activities (See Appendix 1 as posted with this announcement on the CDC Web site):

The purposes of Project A are to:

1. Establish flexible, multi-state, long-term population-based surveillance for severe pneumonia syndrome.

2. Facilitate diagnostics for respiratory syndromes posing immediate threats/concerns (*e.g.,* SARS, pandemic influenza, a bioterrorism agent), developing more effective approaches to respiratory disease outbreak investigation.

3. Characterize pneumonia etiologies at selected institutions.

Project B—Viral Hepatitis Activities (See Appendix 2):

The purpose of Project B is to develop model demonstration projects for enhanced surveillance for viral hepatitis. The specific objectives are to:

1. Provide stable estimates of the incidence of and risk factors for viral hepatitis.

2. Improve the completeness of case report data and ascertainment of cases.

3. Standardize the application of the case definition for viral hepatitis.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases: Protect Americans from infectious diseases.

C. Eligible Applicants

Eligibility for these competitive supplemental awards is limited to the ten current Emerging Infections Program grantees: California, Colorado, Connecticut, Georgia, Maryland, Minnesota, New Mexico, New York, Oregon, and Tennessee.

Eligibility is limited to existing EIP grantees because EIPs are population-based centers designed to work as a network to assess the public health impact of emerging infections and to evaluate methods for their prevention and control. The EIPs are well established with an infrastructure in place to provide the necessary foundation for the development of novel or innovative surveillance activities such as those proposed in this program announcement. EIPs are based in state health departments, each having a variety of established collaborators—local health departments, laboratorians, infection control professionals, healthcare providers, academic institutions, and other EIPs in the network.

Grantees interested in the enhanced surveillance for viral hepatitis must have laws or regulations requiring laboratory reporting of anti-HAV IgM, anti-HBc IgM, HBsAg, and antibody to HCV or HCV RNA (PCR) (HCV reporting preferable, but not required). Eligible health departments should have at least 50 reported cases of acute hepatitis A and 50 reported cases of acute hepatitis B in 2002. (''HAV''—Hepatitis A virus; ''HB''—Hepatitis B; ''HCV''—Hepatitis C virus; ''RNA''—ribonucleic acid; ''PCR''—polymerase chain reaction).

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Project A—Surveillance for SARS and Severe Pneumonia Syndrome

Approximately $500,000–600,000 is available in FY 2003 for four to five awards. Funding will begin on or about September 1, 2003 and be made for the remainder of the current EIP budget period that expires December 29, 2003. It is expected that individual awards will range from $100,000–200,000. Information about subsequent funding, for the 12-month period beginning with the next EIP cycle on December 30, 2003, will be provided with EIP continuation funding guidance and will depend on availability of funds.

Project B—Enhanced Surveillance for Viral Hepatitis

Approximately $300,000–400,000 is available in FY 2003 to fund two to three awards. Funding will begin on or about September 1, 2003 and be made for the remainder of the current EIP budget period that expires December 29, 2003. It is expected that individual awards will range from $100,000–200,000. Information about subsequent funding, for the 12-month period beginning with the next EIP cycle on December 30, 2003, will be provided with EIP continuation funding guidance and will depend on availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

Project A: Surveillance for SARS and Severe Pneumonia Syndrome

This multi-state surveillance activity will consist of three tiered activities, which should be integrated closely with related projects currently being conducted by the EIPs:

a. Establish a flexible, multi-state, long-term population-based surveillance for severe pneumonia syndrome. As a first phase of this activity, surveillance for health care workers with hospitalized pneumonia should be established before the 2003 influenza season.

(1) Characterize the rate of severe pneumonia and seasonal trends.

(2) Describe demographic and epidemiologic characteristics of patients with severe pneumonia.

(3) Characterize clinical features of severe pneumonia hospitalizations.

b. Facilitate diagnostics for respiratory syndromes posing immediate threats/concerns (*e.g.,* SARS, pandemic influenza, a bioterrorism agent).

(1) When SARS-associated coronavirus (SARS-CoV) diagnostics become available to state laboratories: Detect SARS-CoV positive patients (including those who don't have a known epidemiologic link).

(2) Characterize the rate of SARS-CoV positivity among severe pneumonia cases.

(3) Expand facilitated diagnostic testing to other agents of concern as they arise and diagnostics become available.

c. Characterize pneumonia etiologies at selected institutions

(1) Identify causes of unexplained pneumonia.

(2) Refine and simplify pneumonia diagnostics to develop a ''toolkit'' appropriate for state health departments.

(3) Store a well-characterized set of specimens from people with severe respiratory illness for diagnostic testing/retrospective discovery of new pathogens.

Project B: Viral Hepatitis

a. Acute Hepatitis A and B.

(1) Establish laboratory-based surveillance for acute hepatitis A and B.

(2) Follow-up reports of laboratory markers of acute hepatitis A and B infection (anti-HAV IgM, anti-HBc IgM and/or HBsAg) to determine case status.

(3) Investigate cases of acute hepatitis A and B, and collect data on clinical manifestations, laboratory findings, and risk factors. Investigations may include provider and patient interview, and medical record review.

(4) Explore the feasibility of collecting serologic specimens on acute hepatitis A and B cases.

b. Acute Hepatitis C.

(1) Increase the sensitivity and specificity of case reporting (activities depend on local mechanism for reporting).

(2) Explore the feasibility of laboratory-based reporting for acute hepatitis C, including linking liver enzyme test results with laboratory markers for hepatitis C infection (antibody to HCV, and HCV RNA (PCR)).

c. Chronic Hepatitis B and C (optional activity in first year).

(1) Develop an unduplicated database of laboratory reports of markers of chronic hepatitis B and C infection (antibody to HCV, HBsAg).

(2) Develop a prioritized algorithm for follow-up of laboratory reports of markers of chronic hepatitis B and C infection. Contact prioritized cases of chronic hepatitis B and C for counseling and preventive services.

2. CDC Activities (for both projects).

a. Provide consultation and scientific and technical assistance as needed in general operations of the studies and in designing and conducting individual projects.

b. Assist in developing collaborative relationships and facilitate multi-site collaboration as needed to support the successful completion of the project.

c. Participate in analysis and interpretation of data from the project.

d. As needed, assist in monitoring and evaluating scientific and operational accomplishments of the project and progress in achieving the purpose and overall goals of the program.

e. If a proposed project involves research with human subjects and CDC scientists will be co-investigators in that research, assist in the development of a research protocol for IRB review by all institutions participating in the research project. The CDC IRB will review and approve the project initially and on, at least, an annual basis until the research project is completed.

F. Application Content

Grantees may apply for supplemental funds for one or both of the two described projects. If applying for both projects (A-SARS and B-Hepatitis), a separate narrative, budget, and budget justification must be submitted for each. On Form 424 and in the budget justification, applicants should provide a 12-month budget that clearly distinguishes the resources requested for ''Project A'' activities and/or ''Project B'' activities. The line item budgets for Project A—Surveillance for SARS and Severe Pneumonia and for Project B—Hepatitis, should separate costs by the separate activities as broken out in the Recipient Activities section, above.

For all activities proposed, the requested budget should be for a 12-month period; however funding will be awarded only for items that can be obligated by the end of the current EIP budget period (December 29, 2003).

If requesting funds for any contracts, provide the following information for each proposed contract: (1) Name of proposed contractor; (2) breakdown and justification for estimated costs; (3) description and scope of activities to be performed by contractor; (4) period of performance; and (5) method of contractor selection (*e.g.* sole-source or competitive solicitation).

Use the information in the Program Requirements section to develop the application content. Narratives for each Project (A–SARS or B-Hepatitis), should be no more than five single-spaced pages (not including budget and appendices for items such as curricula vitae, letters of support, and other similar supporting information). Material or information that should be part of the narrative will not be accepted if placed in the appendices. Do NOT solicit or submit letters of support from CDC personnel.

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time August 14, 2003. Submit the application to: Technical Information Management—PA#03188, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application (separately reviewing Project A—SARS and Project B—Hepatitis) against the following criteria:

1. Operational Plan (60 points)

a. Extent to which applicant presents an operational plan for initiating and conducting the project, which clearly and appropriately addresses all Recipient Activities in the application.

b. Extent to which applicant clearly identifies specific assigned responsibilities of all key professional personnel.

c. Extent to which the plan clearly describes the applicant's technical approach and method for conducting the proposed project and the extent to which the plan is adequate to accomplish the objectives.

d. Extent to which the applicant proposes specific draft study protocols or plans for the development of study protocols that are appropriate for achieving project objectives.

e. Extent to which the applicant describes plans for collaboration with CDC in initiating the project, developing final protocols, and ongoing operation of the project.

f. Extent to which the applicant describes how they will integrate the project(s) with related projects currently being conducted by the EIPs (such as with Unexplained Deaths and Critical Illnesses projects).

g. Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

2. Description of Capacity (15 points)

a. Extent to which applicant demonstrates past experience in conducting activities similar to those proposed and that the new activities will complement current ones. Applicants that are already engaged in the Unexplained Deaths and Critical Illnesses project should demonstrate that Surveillance for SARS and Severe Pneumonia Syndrome activities will be integrated with ongoing activities.

b. Extent to which applicant provides evidence that this activity can be accomplished while satisfactorily maintaining their ongoing EIP activities.

Extent to which applicant documents accomplishments in conducting active surveillance, applied epidemiologic research, laboratory research, and prevention research.

c. Extent to which applicant identifies key personnel with appropriate experience for the project.

Extent to which applicant includes letters of support from proposed collaborators indicating essential collaborating organizations or individuals and their willingness to participate as proposed. Do not include letters of support from CDC personnel.

3. Background (10 points)

a. Extent to which applicant demonstrates a clear understanding of the subject area, particularly as it relates to the local situation.

b. Extent to which applicant illustrates and justifies the need for the proposed project and demonstrates how the project is consistent with the purpose and objectives of the EIP and of this cooperative agreement supplement.

4. Evaluation (10 points)

Extent to which applicant provides a detailed and adequate plan for evaluating progress toward achieving project process and outcome objectives.

5. Measures of Effectiveness (5 points)

Does the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant? Are the measures objective/quantitative and do they adequately measure the intended outcome?

6. Budget (not scored)

Extent to which the proposed budget is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds.

7. Human Subjects (not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

I. Other Requirements

Technical Reporting Requirements

Technical reporting requirements are the same as those under grantee's existing EIP cooperative agreement award.

The following additional requirements are applicable to this program. For a complete description of each, see Appendix 3 of the program announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on ''Funding'' then ''Grants and Cooperative Agreements.''

For general questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact:

Lynn Walling, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, e-mail address: *Lwalling@cdc.gov.*

For program technical assistance, contact:

Cathy Rebmann, National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., NE, Mailstop D–59, Atlanta, GA 30333, Telephone (404) 371–5363, e-mail address: *csr9@cdc.gov.*

or

Angela Slaughter, National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC), 1600 Clifton Rd., NE, Mailstop D–59, Atlanta, GA 30333, Telephone (404) 371–5357, e-mail address: *aslaughter@cdc.gov.*

Dated: July 9, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 03–17805 Filed 7–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–2786]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with the Life Safety Code of 2000. We cannot reasonably comply with the normal clearance procedures because of the potential for public harm.

We are requesting an emergency clearance because our new regulatory requirements implementing the latest Life Safety Code go into effect on September 11, 2003, and we need to have the survey instrument in place in order to survey facilities to determine compliance. CMS is requesting OMB review and approval of this collection by August 7, 2003, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by July 31, 2003. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Fire Safety Survey Report Forms and Supporting Regulations in 42 CFR 416.44, 418.100, 482.41, 483.70, 483.470;

Form No.: CMS–2786 M, R, and T–Y (OMB# 0938–0242);

Use: CMS surveys facilities to determine compliance with the Life Safety Code of 2000. The providers must make documentation proving compliance available to the surveyors;

Frequency: Annually;

Affected Public: Business or other for-profit, Not-for-profit institutions;

Number of Respondents: 27,900;

Total Annual Responses: 27,900;

Total Annual Hours: 2325.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, in order to be considered in the OMB approval process, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by July 31, 2003:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, *Attn:* Reports Clearance Officer, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, *Fax Number:* (410) 786–3064, *Attn:* Julie Brown; and, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Fax Number:* (202) 395–6974 or (202) 395–5167, *Attn:* Brenda Aguilar, CMS Desk Officer.

Dated: July 9, 2003.

Julie E. Brown,

Acting CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

Administration for Children and Families (ACF)

[Program Announcement No. ACF–ADD–07–10–2003]

Developmental Disabilities: Final Notice of Availability of Financial Assistance and Request for Applications for Support Demonstration Projects Under the Projects of National Significance Program

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

CFDA: The Catalogue of Federal Domestic Assistance number is 93.631—Developmental Disabilities—Projects of National Significance.

ACTION: Invitation to apply for financial assistance.

SUMMARY: The Administration on Developmental Disabilities (ADD), Administration for Children and Families (ACF), is accepting applications for Fiscal Year 2003 Projects of National Significance (PNS).

This Program Announcement consists of five parts. Part I, the Introduction, discusses the goals and objectives of ACF and ADD, while Part II provides background information on ADD for applicants. Part III outlines the grant review process for submitted applications. Part IV describes the Priority Area under which ADD requests applications for Fiscal Year 2003 funding of projects. Finally, Part V provides detailed information for preparing and submitting the application.

Grants will be awarded under this Program Announcement subject to the availability of funds for support of these activities.

DATES: The closing date for submission of applications under this Program Announcement is August 29, 2003.

Mailed or hand-carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, ACF, Office of Grants Management, 370 L'Enfant Promenade SW, 8th Floor, Washington, DC 20447, Attention: Lois Hodge.

Applications hand-carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the closing date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Office of Grants Management, ACF Mail Center, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This mailing address must appear on the envelope/package containing the application with the note ''Attention: Lois Hodge.'' Applicants using express/overnight services should allow two working days (working days are defined as Monday through Friday, excluding Federal Holidays) prior to the closing date for receipt of applications. (**Note to Applicants:** Express/overnight mail services do not always deliver in the agreed upon timeframe.)

Any applications received after 4:30 p.m. on the closing date will not be considered for competition. All applications shall be mailed or hand-carried at the request and expense of the applicant. Additional material will not be accepted or added to an application after the closing date.

ACF cannot, at the present time, accommodate transmission of applications by fax, e-mail, or through other electronic media. Applications transmitted electronically will not be accepted for consideration under this Program Announcement.

For purposes of this grant competition, ACF will not be notifying applicants that their application was received by the deadline. Applicants will, however, be notified of the status of their application in writing after the review process has been completed.

Late Applications: Applications that do not meet the criteria above are considered late applications. ADD shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend the closing date for all applicants because of acts of God, such as floods and hurricanes, widespread disruption of the mail or when it is anticipated that many of the applications will come from rural or remote areas. However, if ACF does not extend the closing date for all applicants, it may not waive or extend the deadline for any applicant.

ADDRESSES: Application materials are available from April Myers, 370 L'Enfant Promenade, SW, Mail Stop: HHH–300F, Washington, DC, 20447, *amyers@acf.hhs.gov* or (202) 690–5985.

FOR FURTHER INFORMATION CONTACT: For information about the application process, program information and application materials contact, Administration for Children and Families (ACF), Lois Hodge, Grants Officer, 370 L'Enfant Promenade, SW, Washington, DC, 20447, 202/401–2344, *lhodge@acf.hhs.gov* or April Myers, Program Specialist, 370 L'Enfant Promenade, SW, Mail Stop: HHH–300F, Washington, DC, 20447, or send e-mail to *amyers@acf.hhs.gov,* or fax (202) 690–6904.

Notice of Intent to Submit Application: If you intend to submit an application, please send a fax or e-mail with the number and title of this Program Announcement, your organization's name and address, your contact person's name, your contact's phone and fax numbers, and their e-mail address to: Administration on Developmental Disabilities, Attention: April Myers, fax: (202) 690–6904, e-mail: *amyers@acf.hhs.gov.* This information will be used to determine the number of expert reviewers needed and to update the mailing list for future Program Announcements from ADD.

Available Funds: Subject to the availability of funding. ADD intends to award new grants resulting from this Program Announcement during the fourth quarter of Fiscal Year 2003. For the purpose of the awards under this Program Announcement, the successful applicants should expect a project start date of September 30, 2003. Up to $3 million in Federal funds will be available to support as many as 30 projects this fiscal year.

Additionally, successful applicants under this Program Announcement may be eligible to compete for implementation funds in Fiscal Year 2004. The Priority Area descriptions include information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term ''budget period'' defines a one-year (12 months) interval of time. Where applicable, a multi-year period of assistance (referred to as the project period) is divided for budgetary and funding purposes into one-year budget periods. The term ''project period'' means the total time a project is approved for support, including continuation applications and any federally approved extensions.

Where appropriate, applicants may propose shorter project periods than the maximums specified in the Priority Area. Non-Federal share contributions may exceed the minimums specified in the Priority Area.

Federal Share of Project Costs: The maximum Federal share of the project is $100,000 per project period.

SUPPLEMENTARY INFORMATION:

Part I: General Information

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF) at the Department of Health and Human Services (DHHS). ADD shares common goals with other ACF programs that promote the economic and social well being of families, children, individuals, and communities. ACF and ADD envision:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, healthy, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States, and Congress that enable solutions that transcend traditional agency boundaries;
- Services planned and integrated to improve access to programs and supports for individuals and families;
- A strong commitment to working with Native Americans, persons with developmental disabilities, refugees and migrants to address their individual needs, strengths and abilities; and
- A community-based approach that recognizes and expands on the resources and benefits of diversity.

The goals, listed above, will enable more individuals, including people with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance (PNS) Program is one means through which ADD promotes the achievement of these goals.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and DHHS responsible for planning and administering programs to promote the self-sufficiency and protect the rights of persons with developmental disabilities. ADD implements the Developmental Disabilities Assistance and Bill of Rights Act, the DD Act, which was reauthorized by Congress in 2000.

The DD Act of 2000 (42 U.S.C.15001, *et seq.*) supports and provides assistance to States, public agencies, and private nonprofit organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity, integration, and inclusion into the community.

As defined in the DD Act, the term ''developmental disabilities'' means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that is manifested before the individual attains age 22 and is likely to continue indefinitely. Developmental disabilities result in substantial limitations in three or more of the following functional areas; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and capacity for economic self-sufficiency.

In the DD Act includes a number of findings, including:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity, integration, and inclusion into the community;
- Individuals whose disabilities occur during their developmental period frequently have severe disabilities that are likely to continue indefinitely; and
- Individuals with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families.

The DD Act further promotes the best practices and policies presented below:

- Individuals with developmental disabilities, including those with the most severe developmental disabilities, are capable of achieving independence, productivity, integration and inclusion into the community, and often require the provision of services, supports, and other assistance to achieve such;
- Individuals with developmental disabilities have competencies, capabilities, and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual; and
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and programs that affect the lives of such individuals and their families.

Toward these ends, ADD seeks to support and accomplish the following:

- Enhance the capabilities of families in assisting individuals with developmental disabilities to achieve their maximum potential;
- Support the increasing ability of individuals with developmental disabilities to exercise greater choice and self-determination and to engage in leadership activities in their communities; and
- Ensure the protection of individuals with developmental disabilities' legal and human rights.

The four programs funded under the Act are:

- State Developmental Disabilities Councils;
- State Protection and Advocacy Systems for Individuals Rights;
- Grants to the National Network of University Centers for Excellence in Developmental Disabilities, Education, Research, and Service; and
- Grants for Projects of National Significance.

C. Statutory Authorities Covered Under This Announcement

This Announcement is covered under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. 15001, *et seq.* The Projects of National Significance (PNS) is part E of the DD Act of 2000, 42 U.S.C. 15081, *et seq.*

Part II. Background Information For Applicants

A. Description of Projects of National Significance

Under part E of the Act, grants and contracts are awarded for Projects of National Significance (PNS) that support the development of national and State policies to enhance the independence, productivity, integration, and inclusion of individuals with developmental disabilities through:

- Data collection and analysis;
- Technical assistance to enhance the quality of State Developmental Disabilities Councils and University Centers for Excellence in Developmental Disabilities; and
- Other projects of sufficient size and scope that hold promise to expand or improve opportunities for people with developmental disabilities, including:

(a) Technical assistance for the development of information and referral systems;

(b) Educating policy makers;

(c) Federal interagency initiatives;

(d) The enhancement of participation of minority and ethnic groups in public and private sector initiatives in developmental disabilities; and

(e) Transition of youth with developmental disabilities from school to adult life.

The purpose of the Projects of National Significance (PNS) program is not only to provide technical assistance to the Developmental Disabilities Councils, the Protection and Advocacy Systems, and the University Centers for Excellence in Developmental Disabilities, but also to support projects ''that hold promise to expand or improve opportunities for individuals with developmental disabilities.'' PNS grantees often challenge traditional thinking and common service practices.

Last Fiscal Year, projects were funded in the following five Priority Areas:

- Learning through Assisting;
- Creating and Celebrating One Community for All Citizens;
- Enhancing Early Literacy and Education for Children with Developmental Disabilities;
- Increasing Access in Rural Communities; and
- Expanding Positive Youth Development Activities for Young People with Developmental Disabilities.

Project activities that received funding in 2002 ranged from creating opportunities for high school students to earn service learning credits working with children with disabilities to improving transportation options for individuals with disabilities residing in rural America. For more information about previous projects and their goals, visit ADD's Web site at *http://www.acf.hhs.gov/programs/add.*

The 2003 Priority Area relates to the outcomes contained in ADD's plan for implementing the Government Performance Reporting Act (GPRA). In

general, projects are expected to increase community support and services, promote self-determination and productivity, and encourage interaction and collaboration among all sectors of the developmental disabilities service system, including public and private sectors. Applicants are encouraged to tailor their grant applications to fit this year's Priority Area.

Part III. The Review Process

A. Eligible Applicants

Before applications under this Program Announcement are reviewed, each one will be screened to determine whether the applicant is eligible for funding under this year's Priority Area. Applications from organizations that do not meet the eligibility requirements for the Priority Area will not be considered or reviewed in the competition, and the applicant will be so informed.

Under this Program Announcement, the Governor of the applicant's State or Territory must designate the applicant as the lead agency for the State/Territory. Acceptable proof of the Governor's designation is a letter from the Governor's office, with his or her official signature, identifying the lead agency by name. The designation letter must accompany the applicant's proposal package to ADD by the closing date. For purposes of this Program Announcement, each State and Territory may have only one lead applicant designated as the lead agency; however, an application must include State and local partnerships.

Project activities must be conducted in partnership with at least one local elected official, the State Developmental Disabilities Council, the State Protection and Advocacy System, and the University Center(s) on Developmental Disabilities in the State/Territory, as well as others (including, but not limited to, disability-related service providers, advocacy groups, family support groups, family strengthening groups, and faith-based organizations).

Individuals are not eligible to apply under this Program Announcement. All applications must identify and acknowledge the designated lead applicant as the official applicant. Participating agencies and organizations should be included as co-participants, sub-grantees, or subcontractors.

Nonprofit organizations must submit proof of their nonprofit status in the application at the time of submission. Proof of status includes providing a copy of the applicant's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501 (c) (3) of the IRS code, a copy of a valid IRS tax exemption certificate, or a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled. ADD cannot fund a nonprofit applicant without acceptable proof of its nonprofit status.

Faith-based organizations are eligible to apply for PNS grants if they meet the eligibility requirements stated above.

Private, nonprofit organizations are encouraged to submit with their applications the optional survey located under ''Grants Manuals & Forms'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

B. Review Process and Funding Decisions

Applications under this Program Announcement (Number 93631—) from eligible applicants received by the deadline date will be competitively reviewed and scored. Experts in the field, generally persons from outside the Federal Government, will use the evaluation criteria listed later in this Part of the Program Announcement to review and score the applications. The results of this review are a primary factor in making funding decisions.

ADD reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal Government and/or the applicant. ADD may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States, and the general public. ADD will consider these comments, along with those of the expert reviewers, in making funding decisions.

In making PNS decisions for 2003 grant awards, ADD will consider whether applications focus on or feature the following aspects/activities in their project design to the extent appropriate:

- A substantially innovative strategy with the potential to improve theory or practice in the field of human services;
- A model practice or set of procedures that holds the potential for replication by organizations administering or delivering human services;
- A substantial involvement of volunteers, the private sector (either financial or programmatic), and/or national or community foundations;
- A favorable balance between Federal and non-Federal funds available for the proposed project, which is likely to result in the potential for high benefit for low Federal investment; and
- A programmatic focus on those most in need of services and assistance, such as unserved and underserved populations, including underserved cultural, ethnic, and racial minority populations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, and rural and urban areas. In making these decisions, ADD may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Process

Using the evaluation criteria (described under the Priority Area in part IV), a panel of at least three reviewers (primarily experts from outside the Federal Government) will evaluate and score the applications. To facilitate this review, applicants should ensure that they address the minimum requirements identified in the Priority Area description under the appropriate section of the Program Narrative Statement.

Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below; provide comments; and assign numerical scores. The point value following each criterion heading under the Priority Area in part VI indicates the maximum numerical weight that each applicant may receive per section in the review process.

D. Grantee Share of Project Costs

Grantees must match $1 for every $3 requested in Federal funding; to provide 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $33,333 (total project cost is $133,333 of which $33,333 is 25%). Applicants must provide letter(s) of commitment, verifying the actual amount and source(s) of the non-Federal share of the proposed costs.

An exception to the grantee cost-sharing requirement relates to applications originating from American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands. Applications from these areas are covered under section 501(d) of Public Law 95–134, which requires that the Department waive any

requirement for local matching funds for grants under $200,000.

The applicant contribution must be secured from non-Federal sources, except as provided by Federal statute. A cost-sharing or matching requirement may not be met by costs from another Federal grant, unless Federal statue sanctions such. For example, funds from Federal programs that benefit Tribes and Native American organizations have been used to provide valid sources of matching funds. Any Tribe or Native American organization submitting an application to ADD should identify the Federal program(s) that will provide the matching funds in its application. If the applicant is selected to receive PNS funds, then ADD will determine whether there is statutory authority for use of such funds. The Administration for Native Americans and the DHHS Office of General Counsel will assist ADD in making this determination.

E. General Instructions for the Uniform Project Description

The following ACF Uniform Project Description (UPD) has been approved under OMB Control Number 0970–0139. Applicants are required to submit a full project description and must prepare the project description statement in accordance with the following instructions.

1. Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

2. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonies from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated) some of which may be outside the scope of the Program Announcement.

3. Results or Benefits Expected

Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors, which might accelerate or decelerate the work, and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. Where activity or function cannot quantify accomplishments, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a ''collection of information'' that is ''conducted or sponsored'' by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. Organization Profile

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Part IV: Fiscal Year 2003 Priority Area for Projects of National

Significance Description and Requirements

The following section presents the Priority Area for Fiscal Year 2003 Projects of National Significance (PNS) and solicits the appropriate applications.

Fiscal Year 2003 Priority Area: Family Support 360

Eligible Applicants: Eligible applicants are limited to a lead agency designated by the Governor of the State or Territory. A letter from the Office of the Governor designating the applicant as the lead agency for the State/Territory must accompany the application. The designated lead agency may be a State or local agency, Tribal government, public or private nonprofit organization (including a faith-based organization), or an institution of higher learning.

Purpose: Through this competitive grant process, ADD will fund pilot projects to plan multi-agency partnerships to design at least one one-stop center to assist poor and/or geographically unserved or underserved families (including underserved families with racial, ethnic, or cultural minority backgrounds) with a child or adult member with a disability (hereafter referred to as ''targeted families'') to preserve, strengthen, and maintain the family. Grant funds under this solicitation are for the costs associated with State planning activities, not the provision of direct services.

Families need access to comprehensive systems of family support services that are family-centered and family-directed, and that provide families with the greatest possible decision making authority and control regarding the nature and use of services and support for them and their members with disabilities. Families need to have the opportunity to participate in the design of family support services. Initiatives that involve families, that center around families, and that promote and develop interagency coordination and collaboration among agencies responsible for providing the services will contribute to family preservation and strengthening.

- *Background Information:* In order to preserve, strengthen, and maintain the family, targeted families often need services and supports that cut across

agency lines. Services and supports may involve all or some of the following: Healthcare, Mental Health, Personal Assistance Services, Respite Care, Family Strengthening Services (such as parenting education and marriage education), Food Stamps, Cash Assistance, Accessible Transportation, Childcare, Accessible Housing, Early Intervention Services, Special Educational Opportunities, Job Training, Assistive Technology, and Employment with Reasonable Accommodations. These services and supports are available from a myriad of public and private providers, each of which has its own eligibility determination criteria and planning process. If a targeted family needs multiple services and supports, there are few States and communities with a comprehensive infrastructure to offer these families a seamless, one-point of entry (*e.g.*, one-stop center) to establish eligibility and develop a family-centered plan to preserve and strengthen families with members with disabilities.

There are multiple funding streams and varied public and private entities that could contribute to a seamless system for targeted families. However, without funding and time to explore avenues for creating such a system, examples of promising practices will remain isolated and generally limited to demonstrating service integration for employment-related assistance for individuals with disabilities. Such efforts often result in improvements in services for individuals with disabilities seeking employment, but few opportunities for families to be strengthened and preserved as a family unit through access to a wide range of other services.

In this time of shrinking resources, it is imperative to support planning initiatives that will allow a variety of partners to discuss and develop consensus on how their collective resources could be used in a more family friendly manner. Successful States under this Program Announcement will receive planning grants to explore with their partners how to develop a common language, pool resources, coordinate services, and share expenses in order to reduce overhead and create a setting (*i.e.*, one-stop center) in which outcome-oriented, family-centered, collaborative planning could occur.

Presently, there are several different Federal programs and funding streams available to State governments and local agencies to assist targeted families and potentially redesigned service systems. Some examples of such programs and funding streams include Medicaid Systems Change Grants, the Center for Medicaid and Medicare Services' (CMS) Independence Plus, Temporary Assistance to Needy Families (TANF), Vocational Rehabilitation, the Ticket-to-Work and direct benefit programs through the Social Security Administration, and one-stops of the Work Force Investment Act. This myriad of programs and funding sources can create a feeling of helplessness in individual families, making discovering and learning to understand the eligibility for each program even more challenging. State agency staff members and local caseworkers may also feel confused when attempting to coordinate the various services at the local level for families. The time has arrived for us to ask fundamental questions about the effectiveness of the service system and to explore, in partnership with families, avenues to create a truly family-centered service system.

In addition to the input from targeted families and the consensus of local and State leaders, the participation and collaboration of the State's DD Network will ensure the success of this planning project. For instance, each State's Developmental Disabilities Council has a wealth of knowledge about their State's programs, public policies, and service barriers to bring to the discussion table. The Protection and Advocacy Agencies have legal experience with and understanding of program eligibility criteria associated with the complexities of the service system. The University Centers for Excellence in Developmental Disabilities have expertise in evaluating the effectiveness of service programs and developing new and innovative projects to address the unmet needs of families.

While ADD welcomes an application from each State and Territory, the Commissioner is particularly interested in providing financial support to States/Territories that are just beginning to explore the issues relating to one-stop family centers and/or States/Territories with some limited experience with service integration efforts.

Successful grantees under this competition will have the opportunity to design a one-stop family center, in collaboration with State and local partners. It may be more practical for grantees to focus their partnership planning efforts on one location for the one-stop center and a limited number of families to be served by its staff. This approach will enable the grantees to identify and project specific funding needs, staffing requirements, collaborative agreements, day-to-day procedures, and other infrastructure considerations necessary for implementing a one-stop family center. Through such a creative and collaborative process, ADD anticipates that each grantee with its partners will develop a collective commitment to serving the targeted families and identify new ways for meeting the needs of individual families.

- *Minimum Requirements for Project Design:* ADD is particularly interested in supporting projects that include each of the activities and desired outcomes provided in the section below.
- *Involvement and Input from Targeted Families.* The meaningful involvement of individuals who are members of targeted families must be an essential and measurable element of all project planning and activities.
- *Project Partnerships.* Project activities must be conducted in partnership with at least one local elected official, the State Developmental Disabilities Council, the State Protection and Advocacy System, and the University Center(s) on Developmental Disabilities in the State/Territory, as well as others (including, but not limited to, disability-related service providers, advocacy groups, family support groups, family strengthening groups, and faith-based organizations).
- *Building Consensus for an Implementation Plan.* Projects should build a consensus for an implementation plan with their partners to establish and sustain a one-stop center for the targeted families. Implementation plans should include Federal, State, and local inter-agency collaboration, and public-private partnerships to achieve service integration for targeted families.
- *Parameters for Services and Supports in the Implementation Plan.* Implementation plans for the one-stop center must address the following parameters: information and referrals, as well as in-depth planning for services and supports with at least fifty (50) families on an annual basis. The families projected to be served would have access to individualized family-centered planning for services and supports. Individualized planning may focus on one or more the following areas of need: healthcare and mental health services, eligibility for personal assistance and supports (*e.g.*, access to direct care workers, respite care, food stamps, and cash assistance), accessible transportation, childcare services, and family strengthening services (*e.g.*, parenting education and marriage education), housing, and employment-related assistance.
- *Assessment of the Capacity and Capability of Information Technology.* A

needs assessment for and/or design of an information system with a single point of entry for the one-stop center should be included in the applicant's project. This activity may involve identifying and testing existing software and hardware to support the computer and informational needs of the one-stop center or designing new technology.

• *Analysis of Eligibility*. A review of existing State and Federal laws that impact the targeted families must be a key element of each project. At a minimum, a legal analysis should provide a detailed summary of the following issues:

(1) Funding streams for services and support to families with members who have disabilities;

(2) The legal and policy barriers for targeted families to achieving self-sufficiency; and

(3) Eligibility criteria and other program requirements that may pose obstacles to serving targeted families.

• *Training Needs*. Each grantee should identify the training needs of staff members who would work with targeted families, and including educational and training issues for non-staff assisting the targeted families in other settings and environments.

• *Existing Resources*. Each grantee should identify existing State and local resources for targeted families, including information on services and supports that are available from community groups and faith-based organizations, including those that provide family strengthening services. This information would form the initial database for the one-stop center, leading to a catalog of services and supports for the staff members and targeted families.

• *Development of Policies and Memoranda of Understanding (MOUs)*. Each grantee should develop MOUs, policy statements, and procedures between State and local partners on key issues for implementing the one-stop center. Some of the key issues to be agreed upon in this planning process among the partners should include the mission of the one-stop center, the eligible families for services, the roles of agencies' staff members, and the lead agency responsibilities.

• *Final Product*. The final product of this planning grant must be a written plan for implementing at least one one-stop center to assist targeted families to preserve and strengthen the family unit. The implementation plan must include, at a minimum, the following information:

1. Criteria and process for selecting targeted families to be served by the one-stop center. For example, families could be required to have eligibility for Medicaid, be among the geographically unserved or underserved in the State, have cultural minority backgrounds, or be eligible for TANF.

2. Criteria to be used to establish that a family has achieved the outcomes in its family-centered plan;

3. Description of operations and procedures relating to the following;

a. Outreach to and recruitment of targeted families;

b. Information and referral to targeted families, community organizations assisting families in need (including those involved in family strengthening), and others;

c. Intake, assessment, and determination of eligibility of families;

d. Development and monitoring of Individualized Family Plans (the process for developing and implementing the plans, including who will be involved in the plan development and who will monitor progress);

e. Records maintenance (access to and retrieval of files, and the confidentiality of the families personal information); and

f. Financing of services (a description of how funding for the services and supports in a family's plan could be secured);

4. Staffing patterns and staff requirements;

5. Roles of the participating agencies and organizations;

6. Organizational chart for the one-stop center;

7. Space and equipment requirements;

8. Time table for implementing this plan for the one-stop center; and

9. Budget requirements for the one-stop center.

• *Key Personnel*. Each grantee should ensure that key project personnel have direct life experience with living with a disability;

• *Civil Rights*. Each grantee must comply with the Americans with Disabilities Act, where applicable, and section 504 of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act amendments of 1992 (Pub. L. 102–569); and

• *Communication and Dissemination*. Each grantee should have the capacity to communicate and disseminate information with their project partners and others through e-mail and other effective, affordable, and accessible forms of electronic communication.

Evaluation Criteria:

Five criteria will be used to review and evaluate each application. Each criterion should be addressed in the project description section of the application. The point values indicate the maximum numerical weight possible for each criterion in the review process. The specific information to be included under each of these headings is described in section G of Part III, General Instructions for the Uniform Project Description. Additional Information that must be addressed is described below.

Criterion 1: Approach (35 points)

The applicant must outline a sound, workable, and detailed plan of action, pertaining to the goals and objectives of the proposed project. Activities should be identified in chronological order, with target dates for accomplishment and the key personnel responsible for completing the activity. The plan of action should also clearly identify and delineate the roles and involvement of each of the proposed project's partners, collaborators, and/or sub-grantees.

The plan of action should involve the following types of information; (a) How the work will be accomplished; (b) factors that might accelerate or decelerate the work; (c) reasons for taking this approach as opposed to other possibilities; and (d) descriptions of innovations and/or unusual features (such as technological or design innovations, reductions in cost and/or time, or extraordinary community involvement). Additionally, the applicant must provide a discussion of how the expected results and benefits will be evaluated for the proposed project. This discussion should explain the methodology that will be used to determine if the needs identified and discussed in the application are being met and if the results and benefits identified are being achieved.

The following list provides the point value for each required item in this Criterion:

15 Points Outlines a sound, workable, and detailed plan of action, pertaining to the goals and objectives of the proposed project.

8 Points Discusses and explains the methodology to be used in determining if identified needs are being meet and expected results are being achieved.

4 Points Cites factors that might accelerate or decelerate the work.

4 Points Provides a rationale for taking this approach as opposed to other possibilities.

4 Points Describes innovations and/or unusual features of the proposed project.

Criterion 2: Objectives and Need for Assistance (20 points)

The application must identify the following information: (a) The need for

assistance, (b) the objectives of the proposed project, (c) the precise location of the proposed project, and (d) the area to be served by the proposed project.

The applicant may accomplish this best by: (a) Pinpointing the relevant physical, economic, social, financial, institutional, or other problems requiring a solution; (b) demonstrating the need for the assistance; (c) stating the principal and subordinate objectives for the proposed project; (d) providing supporting documentation and/or other testimonies from concerned individuals and groups other than the applicant; (e) providing relevant data based on research or planning studies, and (f) including maps and other graphic aids.

The following list provides the point value for each required item in this Criterion:

5 Points Identifies and demonstrates the need for assistance.
5 Points States the principal and subordinate objectives for the proposed project.
4 Points Provides relevant data based on research and/or planning studies.
4 Points Provides supporting documentation and/or testimonies from concerned individuals and groups, other than the applicant.
2 Points Includes maps and other graphics identifying the precise location of the proposed project.

Criterion 3: Organization Profile (20 points)

The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The applicant must describe the relationship between this project and other work that is planned, anticipated, or currently under way by the applicant.

This section should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is structured, the types and quantity of services it provides, and/or the research and management capabilities it possesses. It may include a description of any current or previous relevant experience; or it may describe the competence of the project team and its demonstrated ability to produce final products that are readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization must be included.

The following list provides the point value for each required item in this Criterion:

6 Points Identifies the background of key staff members.
6 Points Demonstrates the organization's ability to administer the proposed project.
6 Points Describes and discusses the role and involvement of individuals with developmental disabilities and their families in the proposed project and organization.
2 Points Includes an organizational chart, depicting the relationship of the project to the current organization.

Criterion 4: Results or Benefits Expected (17 points)

The expected results and benefits of the proposed project should be consistent with the objectives of the application. The application must state the project's anticipated contributions to policy, practice, theory and/or research. The proposed project costs should be reasonable in view of the expected results.

The following list provides the point value for each required item in this Criterion:

10 Points States the anticipated contributions of the proposed project to policy, practice, theory, and/or research.
7 Points Expected results and benefits are consistent with the proposed project's goals and objectives.

Criterion 5: Budget and Budget Justification (8 points)

Applicants are expected to present a budget with reasonable project costs, appropriately allocated across component areas, and sufficient to accomplish the objectives. The requested funds for the project must be fully justified and documented.

Applications must provide a narrative budget justification that describes how the categorical costs are derived and discusses the reasonableness and appropriateness of the proposed costs. Line item allocations and justification are required for both Federal and non-Federal funds. A letter of commitment for the project's non-Federal resources must be submitted with the application in order to be given credit in the review process. A fully explained non-Federal share budget must be prepared for each funding source.

Applicants have the option of omitting the Social Security Numbers and specific salary rates of the proposed project personnel from the two copies submitted with the original application to ACF. For purposes of the outside review process, applicants may elect to summarize salary information on the copies of their application. All salary information must, however, appear on the signed original application for ACF.

The following list provides the point value for each required item in this Criterion:

3 Points Discusses and justifies the costs and reasonableness of the proposed project in view of the expected results and benefits.
3 Points Describes the fiscal controls and accounting procedures to be used.
2 Points Includes a fully explained non-Federal share budget and its source(s).

This year, five additional points will be added to the applicant's total in the scoring process for any project that includes partnership and collaboration with one or more of the 140 Empowerment Zones/Enterprise Communities. To receive the additional five points, the applicant must provide a clear outline for the collaboration and a discussion of how the involvement of the EZ/EC is related to the objectives and the activities of the project. Also, a letter from the appropriate representatives of the EZ/EC must accompany the application indicating its agreement to participate and describing its role in the project.

- *Project Duration: ADD* is soliciting applications for project periods up to one year (12 months) under this Priority Area. Awards, on a competitive basis, will be for a one-year budget period. Subject to the availability of funds, successful applicants for these planning grants will be eligible to compete for implementation funds in upcoming fiscal years.
- *Federal Share of Project Costs:* The maximum Federal share is not to exceed $100,000 for the 12-month budget period.
- *Matching Requirement:* Grantees must match $1 for every $3 requested in Federal funding to reach 25% of the total approved cost of the project. The total approved cost of the project is the sum of the ACF/ADD share and the non-Federal share. Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $33,333 (the total project cost is $133,333 of which $33,333 is 25%).
- *Anticipated Number of Projects To Be Funded:* ADD anticipates funding up

to thirty (30) projects under this Priority Area in FY 2003.

• *CFDA:* ADD's CFDA (Catalogue of Federal Domestic Assistance) number is 93.631—Developmental Disabilities—Projects of National Significance. This information is needed to complete item 10 on the SF424.

• *Applicable Administrative Regulations: Applicable* administrative regulations include 45 CFR part 74, Administration of Grants, for Institutions of Higher Education, non-profit organizations and Indian Tribal Governments; and 45 CFR part 92, Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments. Quarterly project reports and semi-annual financial reports are required from each successful applicant.

Part V: Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this Program Announcement. An application package, containing all of the Federal required forms, can be obtained by contacting April Myers, Program Specialist: ADD, 370 L'Enfant Promenade SW., Mail Stop: HHH–300F, Washington, DC, 20447, or by visiting ADD's Web site at *http://www.acf.hhs.gov/programs/add.* Additionally, one may send their request by e-mail to *amyers@acf.hhs.gov* or by fax to (202) 690–6904 (Attention: April Myers).

Potential applicants should read this section carefully in conjunction with the information contained within the specific Priority Area. The Priority Area description is in part IV.

A. Required Notification of the State Single Point of Contact (SPOC)

All applications under the ADD Priority Area are required to follow the Executive Order (E.O.) 12372 process, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Program and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its State Single Point of Contact (SPOC), if applicable, or to ACF.

All States and Territories, except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming have elected to participate in the Executive Order process and have established a State Single Point of Contact (SPOC). Applicants from these jurisdictions or for projects administered by Federally recognized Indian Tribes need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions.

Applicants must submit all required materials to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submits all required materials and indicate the date of this submittal (or date SPOC was contacted, if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application due date to comment on proposed new or competing continuation awards. However, there is insufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days from the closing date for applications. These comments are reviewed as part of the award process. Failure to notify the SPOC can result in delays in awarding grants.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations that may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF/ADD, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, SW., 8th Floor Washington, DC 20447, Attn: Lois Hodge, ADD—Projects of National Significance.

Contact information for each State's SPOC can be found on the OMB Web site at *http://www.whitehouse.gov/omb/grants/spoc.html* or by contacting your State Governor's office.

B. Notification of State Developmental Disabilities Councils

A copy of the application must also be submitted for review and comment to the State Developmental Disabilities Council in each State in which the applicant's project will be conducted. The Council review comments are not required concurrently with the grant application, but must be received by ADD prior to the award process. A list of the State Developmental Disabilities Councils can be found at ADD's Web site:*http://www.acf.hhs.gov/programs/add* under Programs, or by contacting April Myers, ADD, 370 L'Enfant Promenade SW., Mail Stop: HHH–300F, Washington, DC, 20447, (202) 690–5985.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A-Page 2 and Certifications/Assurances are contained in the application package. Assurances and Certifications may be located on the following Web site: *http://acf.hhs.gov/programs/ofs/forms.htm.* Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page: Enter the selected Priority Area under which the application is being submitted.

Item 1. ''Type of Submission.''

Item 2. ''Date Submitted'' and ''Applicant Identifier''—Date application is submitted to ACF/ADD and applicant's own internal control number, if applicable.

Item 3. ''Date Received By State''—State use only (if applicable).

Item 4. ''Date Received by Federal Agency''—Leave blank.

Item 5. ''Applicant Information.''

''Legal Name''—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

''Organizational Unit''—Enter the name of the primary unit within the applicant organization that will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

''Address''—Enter the complete address that the organization actually

uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

''Name and telephone number of the person to be contacted on matters involving this application (give area code)''—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. ''Employer Identification Number (EIN)''—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. ''Type of Applicant''—Self-explanatory.

Item 8. ''Type of Application''—Preprinted on the form.

Item 9. ''Name of Federal Agency''—Preprinted on the form.

Item 10. ''Catalog of Federal Domestic Assistance Number and Title''—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title. For the Priority Area, the following should be entered, ''93.631—Developmental Disabilities: Projects of National Significance.''

Item 11. ''Descriptive Title of Applicant's Project''—Enter the project title. The title is generally short and is descriptive of the project, and is not the same as Priority Area title.

Item 12. ''Areas Affected by Project''—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. ''Proposed Project''—Enter the desired start date for the project and projected completion date.

Item 14. ''Congressional District of Applicant/Project''—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter ''00.''

Items 15. ''Estimated Funding Levels''—In completing 15a through 15f, the dollar amounts entered should reflect, for a 12-month project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the Priority Area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost sharing or ''matching funds.'' The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see part III, sections E and F, and the specific area of emphasis description.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. ''Is Application Subject to Review by State Executive Order 12372 Process?'' If yes, enter the date the applicant contacted the SPOC regarding this application. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. ''Is Application Subject to Review by State Executive Order 12372 Process?'' If no, check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. ''Is the Applicant Delinquent on any Federal Debt?''—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans, and taxes.

Item 18. ''To the best of my knowledge and belief, all data in this application/pre-application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.''—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. ''Typed Name of Authorized Representative, Title, Telephone Number''—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. ''Signature of Authorized Representative''—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. ''Date Signed''— Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering; (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period of 12 months or (2) the first-year budget period if the proposed project period exceeds 12 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate budget justification should be included to explain fully and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, ''Other.''

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—Line 6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, ''Other.''

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, ''equipment'' is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including; (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, ''Other.''

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as ''miscellaneous'' and ''honoraria'' are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—Line 6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter ''none.'' Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled ''Totals.'' In-kind contributions are defined in title 45 of the Code of Federal Regulations, parts 74.51 and 92.24, as ''property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.''

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column ''(b) First.'' If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under ''(c) Second.'' Columns (d) and (e) are not applicable in most instances, since

ACF/ADD funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

Applicants have the option of omitting the Social Security Numbers and specific salary rates of the proposed project personnel from the two copies submitted with the original application to ACF. For purposes of the outside review process, applicants may elect to summarize salary information on the copies of their application. All salary information must, however, appear on the signed original application for ACF.

3. Project Description

The Project Description is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the Priority Area in part IV. The narrative should also provide information concerning how the application meets the evaluation criteria, using the following headings:

(a) Objectives and Need for Assistance;

(b) Results and Benefits Expected;

(c) Approach; and

(d) Organization Profile.

The specific information to be included under each of these headings is described in section G of part III, General Instructions for the Uniform Project Description.

The narrative should be typed double-spaced on a single-side of an 8½″ x 11″ plain white paper, with 1″ margins on all sides, using black print no smaller than 12 pitch or 12 point size. All pages of the narrative, including attachments (such as charts, references/footnotes, tables, maps, exhibits, etc.) and letters of support must be sequentially numbered, beginning with ''Objectives and Need for Assistance'' as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including all attachments and required Federal forms, must not exceed 60 pages. The federally required forms will be count towards the total number of pages. The 60-page limit will be strictly enforced. All pages beyond the first 60 pages of text will be removed prior to applications being evaluated by the reviewers. A page is a single side of an 8½″ x 11″ sheet of paper with 1″ margins.

Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose copying difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

4. Part V: Assurances/Certifications

Applicants are required to submit a SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants should furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for the award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicant must also understand that they will be held accountable for the smoking prohibition included within Public Law 103–227, part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

In addition, applicants are required under section 162(c)(3) of the Act to provide assurances that the human rights of all individuals with developmental disabilities (especially those individuals without familial protection) who will receive services under projects assisted under part E will be protected consistent with section 110 (relating to the rights of individuals with developmental disabilities). Each application must include a statement providing this assurance.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies;

—Application is from an organization that is eligible under the eligibility requirements, defined in the Priority Area description; and

—Application length does not exceed 60 pages, including attachments and all federally required forms.

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424 if applicable;

—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B—Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate;

—Letter from the Governor in the applicant's State or Territory designating the applicant as the lead agency;

—Project Description (See Part III, Section C);

—Letter(s) of commitment verifying non-Federal cost share

—Any appendices/attachments;

—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying;

—Certification of Protection of Human Subjects, if necessary; and

—Certification of the Pro Children Act of 1994; signature on the application represents certification.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and

back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

F. Paperwork Reduction Act of 1995 (Pub. L. 104–13)

The Uniform Project Description information collection within this announcement is approved under the Uniform Project Description (0970–0139), Expiration Date 12/31/2003.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information.

Any Federal 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.

(Federal Catalogue of Domestic Assistance Number 93.631 Developmental Disabilities—Projects of National Significance)

Dated: July 8, 2003.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 03–17842 Filed 7–14–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Innovative Toxicology Models for Drug Evaluation.

Date: July 23–24, 2003.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Suite 703/7142, Rockville, MD 20852, 301/594–9582, *vollbert@mail.nih.gov.*

This notice if being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17789 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, 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 Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: July 29, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: Update on NCI/DCLG Advocacy Survey; Consumer Advocates in Research and Related Activities update; preparation for September 24, 2003 face-to-face DCLG meeting; update on Clinical Trials project; and President's Cancer Panel survivorship initiative.

Place: National Institutes of Health, 6116 Executive Boulevard, Rm. 220, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Nancy Caliman, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 220, MSC8324, Bethesda, MD 20892, (301) 496–0307, *calimann@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting date to review the results of the NCI/DCLG Advocacy Survey and prepare for the September meeting. These results are critical to the future of the DCLG. Information is also available on the Institute's/Center's home page: *http://www.deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17792 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; 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 Center on Minority Health and Health Disparities Special Emphasis Panel. Special Emphasis Panel Research Infrastructure in Minority Institutions (RIMI) Program.

Date: August 7, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Teresa Chapa, PhD, MPA, Chief, Division of Extramural Activities, National Center on Minority Health and Health Disparities, National Institutes of Health, Bethesda, MD 20852, (301) 402–1366, *chapat@od.nih.gov.*

Dated: July 9, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17861 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; 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 Center on Minority Health and Health Disparities Special Emphasis Panel, ZMD1(03) Establishing Comprehensive Centers Grants.

Date: July 21–22, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton of Bethesda, 8400 Wisconsin Ave., Ambassador 1, Bethesda, MD 20814.

Contact Person: Tommy L. Broadwater, PhD, Senior Advisor to the Director, National Center on Minority Health and Health Disparities, 6707 Democracy Plaza, Room 800, Bethesda, MD 20892, (301) 402–1366.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: July 9, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17862 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: July 11, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mahadev Murthy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 443–2860.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, PA AA03–029 Pharmacotherapy to Treat the Comorbidity of Alcohol and Substance Use Disorders ZAA1 BB (22) R01s.

Date: July 24, 2003.

Time: 10:15 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Boulevard, Willco Building, Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17788 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

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 Special Emphasis Panel, Research Center in Trauma, Burn, and Perioperative Injury.

Date: August 4–5, 2003.

Time: 8 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, 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 3AN–18B, 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, Pharmacy, 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: July 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17790 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

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 Special Emphasis Panel, MBRS Support of Continuous Research Excellence.

Date: July 23, 2003.

Title: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2881.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: July 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17791 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Handheld Devices for Assessment.

Date: August 8, 2003.

Time: 11:30 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17793 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, HIV Reservoirs in the Nervous System: an SIV Model.

Date: August 7, 2003

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Houmam H. Araj, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *haraj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 8, 2003

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17794 Filed 7–14–03; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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, ''Robotics for Rehabilitation.''

Date: August 3–5, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(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: July 8, 2003

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17795 Filed 7–14–03; 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, EARDA.

Date: August 1, 2003.

Time: 9 a.m. to 3 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: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

(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: July 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17796 Filed 7–14–03; 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 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Pediatric Gastroenterology and Nutrition.

Date: July 28, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 747, 6706 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: July 8, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17857 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Production and Testing of Anthrax Recombinant Protective Antigen (rPA) Vaccine.

Date: July 21–22, 2003.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Boulevard, Salons F&G, Gaithersburg, MD 20878.

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 2102, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–2550, *vg8g@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 9, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17859 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: August 14, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAID/NIH/DHHS, 6700–B Rockledge Drive, 3145, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Geetha P. Bansal, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3145, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–5658, *gbansal@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 9, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17860 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–79, Review of R13s.

Date: August 5, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–63, Review of R01s.

Date: August 21, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372, *george_hausch@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 9, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17864 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

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, School Related Research.

Date: July 14, 2003.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892 (301) 435–0912, *levinv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Stress and Sensory Controls in Hyperphagia.

Date: July 14, 2003.

Time: 12 p.m. to 2 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: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Axon Guidance and Plasticity Fellowships.

Date: July 23, 2003.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Advanced Neurotechnology.

Date: August 1, 2003.

Time: 8:30 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: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel, Studies of Alveolar Rhabdomyosarcoma.

Date: August 1, 2003.

Time: 2 p.m. to 4 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: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

(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: July 8, 2003.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17797 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center of 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 BDCN 2 02M: Member Conflict: Brain Disorders and Clinical Neurosciences IRG.

Date: July 17–18, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDR-Efflux; Nanoparticle.

Date: July 21, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal B. West, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892–7808, (301) 435–2514, *westnea@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Strepbiofilm.

Date: July 23, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BBCB (50) Nanoscience and Nanotechnology.

Date: July 24–25, 2003.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Telehealth Technologies Development.

Date: July 24–25, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David George, PhD, Office of Scientific Review, Nat'l Inst of Biomedical Imaging & Bioengineering, National Institutes of Health, 6707 Democracy Blvd, Suite 920, MSC 5469, Bethesda, MD 20892, (301) 496–8633, *georged1@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SSS–M (57) R01 Tissue Engineering RFA: EB–03–10.

Date: July 28–29, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genomic Technology and Cytogenetics.

Date: July 28, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, (301) 435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Novel Genetic Methods.

Date: July 28, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Washington Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

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, ZRG1 PTHB 05M: DNA Repair.

Date: July 28, 2003.
Time: 1 p.m. to 4 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: 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 Cancer Prevention, Treatment and Survivorship.
Date: July 28, 2003.
Time: 1 p.m. to 3 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: Mariela Shirley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7759, Bethesda, MD 20892, (301) 435–3554. *shirleym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Bone Biology.
Date: July 28, 2003.
Time: 1:30 to 3:30 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: Pricilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel Reviews in Eating Disorders.
Date: July 28, 2003.
Time: 2 p.m. to 4:30 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: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902. *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Therapy.
Date: July 28, 2003.
Time: 3 p.m. to 5 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: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–1718. *perkinsp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Dopamine Receptors.
Date: July 29, 2003.
Time: 11 a.m. to 12:30 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: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Emphasis Panel SNEM 1 Member Conflict: Community Level Health Promotion.
Date: July 29, 2003.
Time: 1 p.m. to 5 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: Gertrude K. McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 PTHB 06M: Chemoprevention in Cancer.
Date: July 29, 2003.
Time: 1 p.m. to 3 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: 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 Data and Technology Coordinating Center Special Emphasis Panel RFA–RR–033–008.
Date: July 29, 2003.
Time: 12 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–H (92) Drug Dev for Cancer.
Date: July 30, 2003.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: George W. Chacko, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7806, Bethesda, MD 20892, (301) 435–1220, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Rare Diseases RFA, Clinical Research Centers.
Date: July 30, 2003.
Time: 9 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

Name of Committee: Center for Scientific Review Special Emphasis Panel Musculoskeletal Special Emphasis Panel.
Date: July 30, 2003.
Time: 11:30 a.m. to 1 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: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel Neuroaids and Other End-Organ Diseases.
Date: July 30, 2003.
Time: 11:30 a.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: Abraham P. Bautista, MS, MSC, PhD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Pain: Receptions & Behavior.
Date: July 30, 2003.
Time: 1 p.m. to 3:30 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: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PC (02)S Pathobiochemistry (member).
Date: July 30, 2003.
Time: 1 p.m. to 2 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: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Heath, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892 (301) 435–1741.

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Molecular Pathobiology.

Date: July 30, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Heath, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

Name of Committee: Center for Scientific Review Special Emphasis Panel SBIR Special Emphasis Panel.

Date: July 31–August 1, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel Image Processing and Language Description.

Date: July 31, 2003.

Time: 1 p.m. to 2 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: Weijia Ni, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, niw@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel Studies of Brian Tumors.

Date: July 31, 2003.

Time: 1 p.m. to 3 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: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

(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: July 8, 2003.

Anna Snouffer,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17858 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 17, 2003, 8:30 a.m. to July 18, 2003, 5 p.m., The Fairmont Washington, DC., 2401 M Street, NW., Washington, DC, 20037 which was published **Federal Register** on July 17, 2003, 68 FR 40273–40276.

The meeting will be three days July 16–18, from 7 p.m. to 5 p.m. The location remains the same. The meeting is closed to the public

Dated: July 9, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17863 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: ''Modulating IL–13 Activity Using Mutated IL–13 Molecules That Are Antagonists or Agonists of IL–13'', PCT Application PCT/US00/31044

AGENCY: National Institutes of Health and Food and Drug Administration, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1) (i), that the Food and Drug Administration and the Department of Health and Human Services is contemplating the grant of an exclusive license to practice the inventions embodied in PCT application PCT/US00/31044, entitled ''Modulating IL–13 Activity Using Mutated IL–13 Molecules that are Antagonists or Agonists of IL–13'', which was filed on November 10, 2000, to Lee's Pharmaceutical Holdings, Limited, which is incorporated in Hong Kong. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be China, Taiwan and Hong Kong and the field of use may be limited to therapy for asthma and other immunological disorders.

DATES: Only written comments and/or license applications that are received by the National Institutes of Health on or before September 15, 2003 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Brenda J. Hefti, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804. Telephone: (301) 435–4632; Facsimile: (301) 402–0220; and E-mail: *heftib@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The prospective exclusive license: will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

The technology claimed in the issued patent relates to mutated forms of IL–13, either agonists or antagonists, which have higher binding affinity for the IL–13 receptor than does wild-type IL–13. The application also claims therapeutic uses of these mutated forms of IL–13, and their use as targeting moieties.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 8, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–17865 Filed 7–14–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15589]

Chemical Transportation Advisory Committee; Charter Renewal

AGENCY: Coast Guard, DHS.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Homeland Security has renewed the charter for the Chemical Transportation Advisory Committee (CTAC) for 2 years from July 1, 2003, until July 1, 2005. CTAC is a Federal advisory committee under 5 U.S.C. App.2 (Pub. L. 92–463, 86 Stat. 770). It advises the Coast Guard on safe and secure transportation and handling of hazardous materials in bulk on U.S.-flag vessels and barges in U.S. ports and waterways.

ADDRESSES: You may request a copy of the charter by writing to Commandant (G-MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–1217; or by faxing 202–267–4570. This notice and the charter are available on the Internet at *http://dms.dot.gov* in docket [USCG–2003–15589].

FOR FURTHER INFORMATION CONTACT: Commander Robert Hennessy, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

Dated: July 9, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection.

[FR Doc. 03–17837 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Decision on Domestic Interested Party Petition and Notice of Desire To Contest Decision

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of petitioner's desire to contest Customs decision in response to domestic interested party petition.

SUMMARY: On September 18, 2002, the U.S. Customs Service (now Customs and Border Protection (CBP)) published in the **Federal Register** a notice of receipt of a domestic interested party petition which had been received pursuant to section 516, Tariff Act of 1930, as amended, regarding the classification, under the Harmonized Tariff Schedule of the United States, of certain imported dairy protein blends. The petition asked CBP to review the classification of these products and change the classification from a non-quota classification into a quota classification. On April 1, 2003, after reviewing comments received in response to the petition, CBP issued a Headquarters decision denying the petition and affirming the current classification of the milk protein blends. On April 29, 2003, pursuant to 19 CFR 175.23, the domestic interested party petitioner filed a notice with CBP that it desired to contest this decision.

Pursuant to Section 516(c), this notice attaches CBP's determination as to the classification of the merchandise and notification of petitioner's desire to contest that decision.

DATES: July 15, 2003.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, Office of Regulations and Rulings, CBP, Department of Homeland Security, 202–572–8778.

SUPPLEMENTARY INFORMATION:

Background

Classification of Merchandise

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRIs taken in order.

Milk Protein Concentrates/Milk Protein Blends

Classification of dairy products is essentially based on the composition of the product. In the matter here in issue, direction is also provided by Additional U.S. Note 13 to Chapter 4, HTSUS, which states: ''For the purposes of subheading 0404.90.10, the term ''*milk protein concentrate*'' means any complete milk protein (casein plus lactalbumin) concentrate that is 40 percent or more protein by weight.'' CBP has classified several products which are called milk protein concentrates under subheading 0404.90.10, HTSUS, which provides for: ''Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included: Other: Milk protein concentrates'' which has a general duty rate of 0.37 cents per kilogram, and is not subject to a tariff-rate quota.

The petition filed by the domestic interested party pursuant to section 516, Tariff Act of 1930, as amended, (19 U.S.C. 1516), contended that certain merchandise is not eligible for classification in subheading 0404.90.10, HTSUS, because in petitioner's view it does not conform to all the requirements set forth in Additional U.S. Note 13 to Chapter 4 (set forth above). The petition asked CBP to review two classification rulings on products identified as ''milk protein concentrates.'' On September 18, 2002, a notice of the petition was published in the **Federal Register** (67 FR 58837) informing the public of the petition and inviting comments on the correctness of CBP classification of the merchandise.

After careful review of arguments set forth by petitioner, as well as those raised by comments received in response to the **Federal Register** Notice, CBP determined that the classification contained in the rulings under review was correct and, on April 1, 2003 issued the decision appended hereto, which denied the petitioner's requested reclassification of the goods.

On April 29, 2003, pursuant to 19 CFR 175.23, by letter to the CBP, petitioner filed a notice that it desired to contest the classification of the goods. The notice to contest designated the ports at which the goods are currently being entered and at which petitioner desires to protest the liquidation of one entry of the goods.

Authority: This notice is published in accordance with 19 CFR 175.24 and 19 U.S.C. 1516.

Dated: July 9, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

HQ 965592

April 1, 2003.

CLA–2 RR:CR:GC 965592ptl

Category: Classification.
Tariff No.: 0404.90.10.
RE: Domestic Interested Party Petition on Dairy Protein Blends.

Mr. Robert Torresen, Sidley Austin Brown & Wood, LLP, 1501 K Street, NW., Washington, DC 20005.

Dear Mr. Torresen: This letter concerns Customs decision regarding a petition you filed on behalf of the National Milk Producers Federation (NMPF), pursuant to Section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), involving the tariff classification of certain products referred to

as dairy protein blends under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts

On June 21, 2001, NMPF requested that Customs initiate a proceeding under Section 625(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), to modify various ruling letters relating to the classification under the HTSUS of certain dairy protein blends identified as ''milk protein concentrates'' (MPC). Should Customs not initiate a proceeding under section 625, NMPF requested that its communication be considered a domestic interested party petition pursuant to Section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516).

Specifically, NMPF contends that certain dairy products classified in New York ruling letters (NY) 800374, dated July 27, 1994, and NY D83787, dated November 13, 1998, did not meet the statutory definition of MPC and were therefore not classifiable in subheading 0404.90.10, HTSUS, which provides for ''milk protein concentrates.'' In its submission, NMPF suggests that the subject dairy protein blends should be classified in heading 0402, HTSUS, which provides for milk and cream, concentrated or containing added sugar or other sweetening matter.

The products in the rulings you have identified are described by the importer as being milk protein concentrates. According to the rulings, the products have the following ingredients:

Product 1: Lactose (42.2 percent, ± 0.5 percent), protein (41.5 percent, ± 0.5 percent), ash (8.2 percent, ± 0.5 percent), moisture (4.1 percent, ± 0.3 percent), and fat (2.5 percent, ± 0.5 percent) (NY 800374).

Product 2: Protein (41 percent), fat (29 percent), minerals (7 percent), and moisture (6 percent) (NY D83787).

Both products contain over 40 percent protein by weight. Additionally, product 2 also contains a significantly higher percentage of fat than naturally occurs in milk. Neither ruling contains any information about how the product was manufactured and there is no indication that this information was provided to Customs. Unfortunately, any materials which might have been included in the original case files were lost in the destruction of the New York Customs House at the World Trade Center on September 11, 2001.

As requested, Customs reviewed the classification decisions in both NY 800374 and NY D83787. This review did not persuade Customs that the classification in those rulings was incorrect. Therefore, on September 18, 2002, in accordance with the procedures outlined in 19 U.S.C. 1516, and Title 19, Code of Federal Regulations, Part 175 (19 CFR Part 175), Customs published a notice of ''Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Dairy Protein Blends'' in the **Federal Register** (67 FR 58837). Customs summarized the NMPF contentions and invited the public to comment on the correctness of the rulings cited and the arguments made by NMPF. During the comment period that ended on November 18, 2002, Customs received over 960 comments. Many of the comments contained nearly identical language expressing support for or opposition to the NMPF position.

Issue

Whether milk protein concentrates of subheading 0404.90.10, HTSUS, are limited to products produced by ultrafiltration and containing casein and lactalbumin in the same proportion as found in milk, or whether they also include a blend of milk constituents and concentrated milk proteins where the total casein and lactalbumin content exceeds 40 percent by weight.

Law and Analysis

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

0402—Milk and cream, concentrated or containing added sugar or other sweetening matter:

0404—Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included:

* * * * *

0404.90	Other:
0404.90.10	Milk protein concentrates
	Other:
	Dairy products described in additional U.S. note 1 to chapter 4:
0404.90.28	Described in general note 15 of the tariff schedule and entered pursuant to its provisions.
0404.90.30	Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.
0404.90.50	Other [1]

[1] See subheadings 9904.04.50–9904.05.01.

Additional U.S. Note 13 to Chapter 4 describes ''Milk protein concentrate'' as follows:

13. For purposes of subheading 0404.90.10, the term ''milk protein concentrate'' means any complete milk protein (casein plus lactalbumin) concentrate that is 40 percent or more protein by weight.

You contend that the products classified in NY 800374 and NY D83787 are not ''complete milk proteins'' as defined by Additional U.S. Note 13 because they are not ''unified protein complexes in which both the casein and lactalbumin are present in the same proportion, relative to each other, as they are found in milk.'' Even though the rulings do not provide information about the method of manufacture, you also contend that neither product of the rulings can be described as ''concentrates,'' since you contend that they have not been produced and concentrated by means of ultrafiltration.

You assert that the language of Additional U.S. Note 13 is intended to restrict classification in subheading 0404.90.10, HTSUS, to products which have been produced from skim milk by a process known as ultrafiltration. In that process, skim milk is forced through a membrane which allows smaller lactose, water, mineral, and vitamin molecules to pass through the membrane, while the larger protein and fat molecules are retained and concentrated. You argue that the phrase ''complete milk protein (casein plus lactalbumin)'' requires that a product classified in subheading 0404.90.10 contain only fully functional, single (unified) protein complexes in concentrate form. You claim that only products made by the ultrafiltration process contain such proteins. You also contend that milk proteins obtained from methods other than ultrafiltration are neither complete nor fully functional. You state that products produced by means other than ultrafiltration are not products described in the note and are not eligible for classification in subheading 0404.90.10, HTSUS.

You refer to two Customs Headquarters ruling letters, HQ 070297, dated October 7, 1982, and HQ 073235, dated December 21, 1983, in which an ultrafiltrated product referred to as Total Milk Proteinate (TMP) containing nearly 90 percent milk protein was classified as a product in chief value of casein and not subject to the dairy quota. Despite the fact that these rulings were

issued under the Tariff Schedules of the United States (TSUS) (the predecessor to the Harmonized Tariff Schedule of the United States), you argue that they show a clear intent of Customs to classify only products which are manufactured by means of ultrafiltration in non-quota provisions. In your view, these rulings served as the impetus for Congressional modification of the TSUS. To support your position you provided language from the 1984 Senate Finance Committee Report on the Omnibus Tariff and Trade Measures (S. Prt 98–219) which created three new provisions in the TSUS to provide for: Whey Protein Concentrate (Item 118.35); Lactalbumin (Item 118.40); and Milk Protein Concentrate (Item 118.45). The Committee report describes total milk proteinate as being ''a soluble milk proteinate in which casein and undenatured whey products are isolated as a single protein complex.''

That Committee Report also contained a proposed TSUS Headnote defining milk protein concentrate as ''any milk protein concentrate that is 40 percent or more protein by weight.'' You contend that the report demonstrates that only ultrafiltrated milk protein concentrates were intended to be included within the non-quota tariff provision created by Congress. When the HTSUS was adopted, the non-quota treatment of MPCs was carried forward to the subheading at issue. However, you concede that Congress did not include any language in either the TSUS Headnote, or the HTSUS Additional U.S. Note, which explicitly identifies any particular manufacturing process as being required for MPC.

As stated above, goods are classified under the HTSUS according to the terms of the headings and relevant section and chapter notes and by applying the GRIs in order. You have contended that the MPC products in the identified rulings should be classified in heading 0402, HTSUS. Heading 0402, HTSUS, provides for: Milk and cream, concentrated or containing added sugar or other sweetening matter. ''Concentrated'' milk is defined by the U.S. Food and Drug Administration (FDA) as being ''the liquid food obtained by partial removal of water from milk.'' The products which are the subjects of the disputed rulings are not concentrated milk, but rather are products which consist of milk constituents. The ENs to heading 0404, HTSUS, provide, in pertinent part, ''The heading also covers fresh or preserved products consisting of milk constituents, which do not have the same composition as the natural product, provided they are not more specifically covered elsewhere. Thus the heading includes products which lack one or more natural milk constituents, milk to which natural milk constituents have been added (to obtain, for example, a protein-rich product).'' As such, milk protein concentrates are described by the terms of heading 0404 and not those of heading 0402. Accordingly, they are ineligible for classification in heading 0402 and we must now determine the correct subheading for the products within heading 0404, HTSUS.

The manufacturers and importers buy and sell the products under consideration as ''Milk Protein Concentrates.'' We have determined that the products are goods of heading 0404, HTSUS. We must now determine whether the products are included within the scope of the legal definition of milk protein concentrate contained in Additional U.S. Note 13 to Chapter 4.

A number of the comments received in response to the 516 Notice discussed the terms of Additional U.S. Note 13. Many of the comments contend that your position, which limits coverage of the Note to products produced by ultrafiltration, is not supported by the language of the Note. These comments point out that when Congress was drafting the Note, it could have used restrictive language to achieve the result you urge. However, this was not done.

These commenters state that in the food industry, the term ''milk protein concentrates'' is commonly used to refer to a wide variety of products of varying composition. These products are manufactured to specification to render them suitable for specific end uses in the food industry. In addition, they point out that certain milk protein concentrates are obtained by a combination of ultrafiltration and blending, while other products contain milk proteins that are isolated from milk by other processes such as precipitation. They contend that products containing 40 percent or more protein by weight have more protein than milk and are thus milk protein concentrates. They also note that if Congress intended the provision to be limited to the total milk proteinate that was the subject of the previous Customs ruling, it would not have enacted the broad language of Additional Note 13 and would not have set the milk protein threshold as low as 40 percent.

Upon consideration of the petition and the comments submitted, Customs agrees with the comments received that the Note does not restrict MPCs to any particular method of manufacture. Rather, the Note speaks to ''any'' complete milk protein concentrate which contains a specified protein percentage by weight. The use of the term ''any'' suggests that a broad rather than restrictive reading of the note was intended. The Note does require that the protein be ''complete'' which, according to the Note, requires that it contain casein and lactalbumin. However, the Note neither requires that the proteins be in the same proportion as they are found in milk, nor does it specify relative percentages of the protein components. It requires only that the source of the proteins be milk, that casein and lactalbumin be present, and that they constitute 40 percent or more, by weight, of the product.

None of the conditions you urge such as retention of ''fully functional properties'' and that the proteins not be ''denatured'', which you have indicated are requirements for inclusion in the subheading 0404.90.10, are specified in the text of Additional U.S. Note 13 to Chapter 4. Had Congress intended the subheading to be limited to only those products which meet the standards you specify, it could have drafted the provision accordingly. However, the text that was adopted does not contain any of the narrow restrictions you describe. Moreover, there is nothing in the legislative history that demonstrates an intent to limit the provision to ultrafiltrated products. Finally, as many commenters pointed out, and the study performed by the General Accounting Office on this issue made clear, the term ''milk protein concentrates'' is used in commerce to refer to a class of products much broader than those produced by ultrafiltration. For example, the study states that products known as milk protein concentrates produced in Canada are made by blending milk proteins. (General Accounting Office, *Report to Congressional Requesters, Dairy Products: Imports, Domestic Production, and Regulation of Ultra-filtered Milk,* GAO–01–326, March 2001, at 7). Tariff terms are presumed to reflect their commercial meaning. (*Nylos Trading Co.* v. *United States,* 37 CCPA 71 (1949); *Carl Zeiss, Inc* v. *United States,* 195 F.3d 1375 (1999), citing *Simod Am. Corp.* v. *United States,* 872 F.2d 1572 (Fed. Cir. 1989).

For a product to be eligible for classification in subheading 0404.90.10, HTSUS, it must be a concentrate. You argue that the term refers to a product that has had liquids removed from it to make it stronger, and that only ultrafiltered products satisfy this requirement. Customs itself initially considered this view in 2001, when, as part of a Notice of proposed revocation, it stated: ''the common dictionary meaning of the words 'milk protein concentrate' would be a protein product derived from milk in which the milk protein content has been intensified or purified by the removal of 'foreign or inessential' milk constituents, such as water, minerals and lactose.'' (*See Customs Bulletin and Decisions,* Vol. 35, No. 40, October 3, 2001).

Comments received in response to that Notice noted that products known in the trade as milk protein concentrates were in fact produced by a variety of methods other than ultrafiltration. They argued these products, *e.g.*, a blend of skim milk and whey protein concentrates or caseinates, were concentrates since they were dairy products whose milk protein content was higher than that found in milk.

Upon further consideration, Customs agrees that such products may be considered concentrates within the meaning of the provision. These products consist of milk constituents whose protein content has been intensified by blending with a concentrated milk protein such as whey protein concentrate or caseinates.

In that same proposed revocation, Customs referred to an International Dairy Federation publication of May 1992, as the basis for the statement that ''The dairy industry has specific terminology and parameters when referring to milk protein concentrate.''

While that statement reflected certain information before Customs at the time of the proposal, comments received thereafter revealed that there is no standard of identity for MPC recognized under the *Codex Alimentarius* or other international non-governmental organizations. Similarly, there is no recognized commercial standard for these products. Milk protein concentrates contain varying amounts of milkfat, proteins

and other constituents which are customized by producers to meet the needs of customers.

It has become clear that in the dairy industry, it currently is common practice to create products by adding ingredients, which may, in fact be protein concentrates themselves (such as whey protein concentrates or caseinates), to raw materials. The resulting products are marketed and sold to customers as milk protein concentrates. This practice is acknowledged by the previously cited EN to heading 0404, ''Thus the heading includes * * * milk to which natural milk constituents have been added (to obtain, for example, a protein-rich product).''

Based upon the foregoing information provided in the comments, Customs decided to withdraw the proposed revocation of the rulings.

Additional U.S. Note 13 to Chapter 4, in our view, describes a product, not a process. The provision cannot be seen to specify all the methods that might be employed to create MPC, in part because they had not been developed. Technologies have developed since 1984 which enable manufacturers to produce an increasing number of varieties of products that are entered into the marketplace and offered for sale to purchasers which are identified as MPCs. This analysis of tariff language was recently employed by the United States Court of International Trade when, in reference to chemical products, it stated: ''* * * the tariff schedule should not be interpreted by reference to the method of producing the chemical compound at issue, instead of the relative simplicity of the finished product's chemical structure. Relying on method of production would undermine any consistency in the classification of imported chemicals, as new and complex chemical processes are developed constantly.'' *E.T. Horn Co.* v. *United States,* CIT Slip Op. 03–20 (February 27, 2003).

Over the course of many years, Customs has classified many different products identified as MPCs in subheading 0404.90.10, HTSUS. These products contain varying amounts of proteins and other ingredients such as milkfat and lactose. The determinative factor in these rulings has been the protein content, not the manufacturing process (see, HQ 950484, dated January 3, 1992, a product produced from skim milk by a chromatographic separation process, containing 76 to 80 percent protein; NY 812858, dated August 3, 1995, a product produced from coagulated, heated skim milk, containing 80 percent protein; NY 800374, dated July 27, 1994, process unidentified, protein content 41 percent; HQ 965395, dated April 5, 2002, a product produced either by dry blending nonfat dry milk, whey protein concentrate 35 and fine, 90-mesh casein or by mixing condensed liquid skim milk with whey protein concentrate 35 and casein, containing 42 to 44 percent protein). Moreover, these products were bought and sold in the trade as MPCs.

Based upon the above analysis of the language of the tariff, the arguments you raised and the comments received in response to the Notice, Customs finds that the classification provided in rulings NY 800374, dated July 27, 1994 and NY D83787, dated November 13, 1998 is correct. Accordingly, Customs hereby denies your petition to reclassify the subject products, referred to as dairy protein blends.

Holding

The classification of milk protein concentrates in subheading 0404.90.10, HTSUS, in NY 800374, dated July 27, 1994 and NY D83787, dated November 13, 1998, which were the subject of the domestic interested party petition, is correct, and these rulings are affirmed.

Please be advised that pursuant to 19 CFR 175.23, if you so wish, you may file a notice that you desire to contest the classification of the subject products within 30 days of the date of this letter. Such notice should also designate the port or ports at which the products are being imported into the United States, and at which you desire to protest.

Sincerely,

Myles B. Harmon,

Director, Commercial Rulings Division.

[FR Doc. 03–17802 Filed 7–14–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–31]

Notice of Proposed Information Collection: Comment Request; Assisted Living Conversion Program (ALCP)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 15, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Assisted Living Conversion Program (ALCP).

OMB Control Number, if applicable: 2502–0542.

Description of the need for the information and proposed use: The information collection is a grant application and reporting forms for HUD's Assisted Living Conversion Program (ALCP). HUD will use the grant applications to determine an applicant's need for and capacity to administer grant funds. The applicants are usually not-for-profit institutions. HUD will evaluate applications through the use of statutory and administratively designated selection criteria.

Agency form numbers, if applicable: HUD–50080–ALCP, HUD–92045, HUD–424, HUD–424B, HUD–2880, HUD–2991, and SF–269.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 2,550; the number of respondents is 30 generating approximately 135 annual responses; the frequency of response is quarterly, semi-annually, and annually; and the estimated time needed to prepare the response varies from 15 minutes to 80 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: July 7, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–17770 Filed 7–14–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–33]

Delegation of Authority To Affix Department Seal and Authenticate Documents

AGENCY: Office of the Secretary, HUD.

ACTION: Delegation of authority.

SUMMARY: This delegation of authority revises and updates the designation of Department officials and staff designated to affix the Department's seal and authenticate copies of documents.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Shari Weaver, Managing Attorney, Office of Litigation, Office of General Counsel, Room 10258, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–0300. (This is not a toll-free number.) For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

Section A. Authority Delegated

Each of the following HUD employees is designated as an Attesting Officer and is authorized to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, paper, microfilm, or other document is a true copy of that in the files of the Department:

1. Each Assistant Secretary;
2. President, Government National Mortgage Association;
3. Inspector General;
4. General Counsel;
5. Chief Financial Officer;
6. The Director of each Headquarters Office;
7. Each Deputy Assistant Secretary;
8. Each Regional Director;
9. Each Field Office Director;
10. Each Deputy General Counsel;
11. Each Associate General Counsel;
12. Each Assistant General Counsel;
13. Each Regional Counsel;
14. Each Chief Counsel; and
15. The Docket Clerks, in the Office of General Counsel.

Section B. Authority Revoked

This delegation revokes and supersedes the delegation of authority published on October 23, 1995 (60 FR 54380).

Authority: Sections 7(d) and (g), Department of Housing and Urban Development Act (42 U.S.C. 3535(d) and (g)).

Dated: July 2, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–17769 Filed 7–14–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–13]

Delegation of Authority to the President of the Government National Mortgage Association

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: The Secretary of HUD is delegating to the President, Government National Mortgage Association (Ginnie Mae), all authority of the Secretary with respect to management of Ginnie Mae and Ginnie Mae's programs, pursuant to Title III of the National Housing Act.

EFFECTIVE DATE: June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Owens, Government National Mortgage Association, Room 6286, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–9000; telephone (202) 708–2648 (this is not a toll-free number). Speech- or hearing-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Secretary is in the process of updating delegations issued to officials within the Department, including the President of Ginnie Mae, which is a wholly-owned government corporation within the Department, pursuant to 42 U.S.C. 3534(b). In this delegation of authority, the Secretary delegates to the President of Ginnie Mae all authority of the Secretary with respect to management of Ginnie Mae and Ginnie Mae's programs, pursuant to Title III of the National Housing Act, 12 U.S.C. 1716 *et seq.* In this document the Secretary retains authority under this statute and also delegates this authority to the President of Ginnie Mae.

Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated

The President of Ginnie Mae is delegated the authority of the Secretary with respect to management of Ginnie Mae and Ginnie Mae's programs, pursuant to Title III of the National Housing Act, 12 U.S.C. 1716 *et seq.*

Section B. Authority To Redelegate

The authority delegated in this document may be redelegated by the President of Ginnie Mae in writing to officials in Ginnie Mae except the authority to issue and waive regulations.

Section C. Authority Excepted

The authority delegated in this document does not include the authority to sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 30, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–17768 Filed 7–14–03; 8:45 am]

BILLING CODE 4210–66–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following application to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 14, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax(703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Darren A. Collins, Galena, KS, PRT–073836.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: July 3, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–17849 Filed 7–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Restoration Plan and Environmental Assessment for the Lone Mountain Processing, Inc. Coal Slurry Spill Natural Resource Damage Assessment in Lee County, VA

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), announces the release of the Final Restoration Plan and Environmental Assessment (RP/EA) for the Lone Mountain Processing, Inc. (LMPI) Coal Slurry Spill Natural Resource Damage Assessment in Lee County, Virginia. The RP/EA describes the trustee's plan to restore natural resources injured as a result of a release of hazardous substances.

ADDRESSES: Requests for copies of the Final RP/EA may be made to: U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

FOR FURTHER INFORMATION CONTACT: John Schmerfeld, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, Virginia 23061. Interested parties may also call 804–693–6694, extension 107, for further information.

SUPPLEMENTARY INFORMATION: On October 24, 1996, a failure in a coal slurry impoundment associated with a coal processing plant owned by LMPI in Lee County, Virginia, resulted in the release of six million gallons of coal slurry to the Powell River watershed. The spill occurred when subsidence in the coal slurry impoundment caused the coal slurry to enter a system of abandoned underground coal mine-works. The coal slurry exited through a mine-works surface portal at Gin Creek, causing the release of the coal slurry into a series of tributaries to the Powell River. ''Blackwater,'' a mix of water, coal fines, and clay, and associated contaminants, extended far downstream. The coal slurry spill impacted fish, endangered freshwater mussels, other benthic organisms, supporting aquatic habitat, and designated critical habitat for two federally listed fish. Federally listed bats and migratory birds may have also been affected acutely due to a loss of a food supply, and chronically due to possible accumulation of contaminants through the food chain.

A Consent Decree (CD) was entered with the U.S. District Court for the Western District of Virginia, Big Stone Gap Division by the United States and LMPI on March 5, 2001, to address natural resource damages resulting from the 1996 release. The CD required that LMPI pay $2,450,000 to the DOI Natural Resource Damage Assessment and Restoration Fund. The CD stipulates that these funds are to be ''* * * utilized for reimbursement of past natural resource damage assessment costs, and restoration, replacement or acquisition of endangered and threatened fishes and mussels located in the Powell River and its watershed, or restoration, replacement or acquisition of their habitats or ecosystems which support them, or for restoration planning, implementation, oversight and monitoring.''

Section 111(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires natural resource trustees to develop a restoration plan prior to allocating recoveries to implement restoration actions, and to obtain public comment on that plan. Under the National Environmental Policy Act (NEPA), Federal agencies must identify and evaluate environmental impacts that may result from Federal actions. A Notice of Availability of the Draft RP/EA was published in the **Federal Register** on February 15, 2003, and a 30-day public comment period ended on March 15, 2003. Public comments were received and are addressed in the Final RP/EA. The Final RP/EA integrates CERCLA and NEPA requirements by summarizing the affected environment, describing the purpose and need for action, and selecting and describing the preferred restoration alternative.

Interested members of the public are invited to review the Final RP/EA. Copies of the Final RP/EA are available at the Service's Virginia Field Office in Gloucester, Virginia and at the Service's Southwestern Virginia Field Office located at 330 Cummings Street, Suite A, Abingdon, Virginia 24210.

Author: The primary author of this notice is John Schmerfeld, U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Authority: The authority for this action is the CERCLA of 1980 as amended, commonly known as Superfund (42 U.S.C. 9601 *et seq.*), and the Natural Resource Damage Assessment Regulations found at 43 CFR, part 11.

Dated: June 27, 2003.

Richard O. Bennett,

Acting Regional Director, Region 5, Fish and Wildlife Service, U.S. Department of the Interior, Designated Authorized Official.

[FR Doc. 03–17813 Filed 7–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1020–AC–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on August 12 and 13, 2003. On August 12 the meeting will be held at the VFW Hall, 933 Sells Avenue, Canon City, Colorado from 7 p.m. to 9 p.m. The meeting will reconvene on August 13 at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado from 9:15 a.m. to 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado. Planned agenda topics include:

On August 12, 2003 the public is encouraged to provide comments on the preliminary draft Sustaining Working Landscapes Initiative.

On August 13, 2003 the Council will discuss the preliminary draft Sustaining Working Landscapes Initiative with the purpose of providing advice to the BLM Colorado State Director. All meetings are open to the public. The public is encouraged to make oral comments to the Council between 7 p.m. and 9 p.m. August 12 or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM), Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719) 269–8500.

Dated: July 8, 2003.

John L. Carochi,

Acting Front Range Center Manager.

[FR Doc. 03–17814 Filed 7–14–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Operational Changes in Support of Lake Cascade Fishery Restoration, Boise Project, Payette Division, Idaho

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and conduct public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare an environmental impact statement (EIS), and conduct associated public scoping meetings for proposed operational changes at Lake Cascade, on the North Fork Payette River near Cascade, Idaho. The purpose of the proposed operational changes is to allow the Idaho Department of Fish and Game (IDFG) to efficiently and effectively remove most of the northern pikeminnow and largescale suckers from the lake. IDFG has determined that the presence of large numbers of northern pikeminnow and largescale suckers in the lake are a major cause in the decline of the important yellow perch and trout fishery and will prevent recovery of the fishery unless their numbers are significantly reduced. The current proposal is for Reclamation to lower the water elevation of Lake Cascade to the lowest level possible to allow IDFG to remove the undesirable fish and restock the lake with perch and trout.

Reclamation has scheduled public meetings to describe the proposed project and obtain public input on potential impacts of the proposed operational changes at Lake Cascade. These meetings will assist in determining issues and concerns associated with the project that will be analyzed in the EIS.

DATES: Public scoping meetings will be held on the following dates:

- August 11, 2003, in Cascade, Idaho.
- August 12, 2003, in Boise Idaho.
- August 13, 2003, in Emmett, Idaho.

Each meeting will begin with a formal presentation about the proposed project from 7 p.m. to 7:30 p.m. followed by an informal open house from 7:30 p.m. to 8:30 p.m. Comments on the proposed project will be accepted through September 12, 2003.

The meeting facilities are physically accessible to people with disabilities. Please direct requests for sign language interpretation for the hearing impaired, or other auxiliary aids, to Steve Dunn by August 1, 2003, by telephone, fax, or TTY relay number listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

ADDRESSES: Written comments or requests for inclusion on the EIS mailing list may be submitted to Bureau of Reclamation, Snake River Area Office, Attention: Steve Dunn, Natural Resources Specialist, 214 Broadway Avenue, Boise ID 83702–7298.

The meetings will be held at the following locations:

- August 11, 2003, at the American Legion Hall, 105 E Mill Street, Cascade, Idaho.
- August 12, 2003, at the Idaho Department of Fish and Game, 600 S Walnut, Boise Idaho.
- August 13, 2003, at the U.S. Department of Agriculture Service Center, 1805 Highway 16, Emmett, Idaho.

FOR FURTHER INFORMATION CONTACT: Anyone interested in more information concerning the EIS, or who has information that may be useful in identifying significant environmental issues, may contact Mr. Steve Dunn at telephone 208–334–9844, or e-mail *sdunn@pn.usbr.gov*. TTY users may call 208–334–9844 by dialing 711 to obtain a toll free TTY relay.

SUPPLEMENTARY INFORMATION: Cascade Dam and Reservoir, located on the North Fork Payette River in west central Idaho, were constructed by Reclamation for use as a Federal irrigation facility. Cascade Reservoir, now designated Lake Cascade, has a storage capacity of 693,123 acre feet and encompasses 26,500 surface acres. Lake Cascade, along with Reclamation's Deadwood Reservoir, are part of Reclamation's Payette Division of the Boise Project. These reservoirs supply irrigation water to Idaho Water District 65, which encompasses the lower Payette River Basin. Hydropower is generated at Cascade Dam by Idaho Power Company.

At its peak from the late 1970's through the early 1990's, Lake Cascade was the most-fished water body in Idaho. The year-round yellow perch fishery and stocked rainbow trout and coho salmon not only provided thousands of recreation days for anglers but also significant income for the local economy. The perch fishery vanished and the trout fishery declined significantly in the mid-1990's, and neither has recovered.

IDFG began investigating the decline of the yellow perch fishery in Lake Cascade in 1998 and determined that large numbers of northern pikeminnow and largescale suckers in the lake are a major cause in the decline of the recreational fishery and will prevent recovery of the fishery unless their numbers are significantly reduced. Northern pikeminnow are predators on both yellow perch and trout, and largescale suckers are contributing to the decline of the fishery by competing for food resources.

IDFG has analyzed different methods to remove and/or reduce the numbers of northern pikeminnow and has concluded that the most economical method with the highest probability for

success would entail draining the reservoir pool, passing most fish downstream, and utilizing a fish toxicant (rotenone) to kill any remaining fish. The configuration of Cascade Dam would allow the almost complete evacuation of water down to the former river channel. After the eradication of the fish, the reservoir would begin to refill with the next seasons spring runoff.

Through preliminary public involvement conducted by IDFG, several areas of potential impact and public concern caused by the proposed operational changes have been identified. Irrigation supply may be affected, and alternative management of flows and operations will need to be considered. The flows in the North and South Forks of the Payette River provide a commercial whitewater rafting industry, and change in water management from Reclamation reservoirs may have adverse effects. Water-based recreation on the lake itself may also be impacted. Water quality both in Lake Cascade and downstream may be impaired. Lake Cascade also supports several nesting pairs of bald eagles, a federally listed threatened species, as well as abundant waterfowl and other wildlife.

In response to the issues developed during scoping, other alternative means of operating the reservoir system to meet IDFG's needs will be explored and analyzed in the EIS if found to be feasible. In addition to changes at Lake Cascade, these alternatives may involve changes in operations upstream at Payette Lake, as well as at Deadwood Reservoir. Federal, state and local agencies, tribes, and the general public are invited to participate in the EIS process.

Dated: June 11, 2003.

J. William McDonald,

Regional Director, Pacific Northwest Region.

[FR Doc. 03–17815 Filed 7–14–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR part 733, Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs; 30 CFR part 785, Requirements for permits for special categories of mining; and 30 CFR part 876, Acid mine drainage treatment and abatement program, have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and their expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by August 14, 2003, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of any of the three information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted three requests to OMB to renew its approval for the collections of information found at 30 CFR parts 733, 785 and 876. OSM is requesting a 3-year term of approval for these information collection activities.

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 these collections of information are 1029–0025 for part 733, 1029–0040 for part 785, and 1029–0104 for part 876, and may be found in OSM's regulations at 733.10, 785.10 and 876.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collections of information for parts 733, 785 and 876 was published on March 14, 2003 (68 FR 12379). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs, 30 CFR 733.

OMB Control Number: 1029–0025.

Summary: This part provides that any interested person may request the Director of OSM to evaluate a State program by setting forth in the request a concise statement of facts that the person believe establishes the need for the evaluation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Any interested person (individuals, businesses, institutions, organizations).

Total Annual Response: 2.

Total Annual Burden Hours: 200 hours.

Title: Requirements for permits for special categories of mining, 30 CFR 785.

OMB Control Number; 1029–0040.

Summary: The information is being collected to meet the requirements of sections 507, 508, 510, 515, 516, 701 and 711 of Pub. L. 95–87, which require applicants for special types of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activity.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for coalmine permits.

Total Annual Responses: 432.

Total Annual Burden Hours: 47,850 hours.

Title: Acid mine drainage treatment and abatement program, 30 CFR 876.

OMB Control Number: 1029–0104.

Summary: This part establishes the requirements and procedures allowing State and Indian Tribes to establish acid mine drainage abatement and treatment programs under the Abandoned Mine Land fund as directed through Public Law 101–508.

Bureau Form Number: None.

Frequency of Collections: Once.

Description of Respondents: State governments and Indian Tribes.

Total Annual Responses: 1.

Total Annual Burden Hours: 350 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to

minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–5806 or via e-mail to *Ruth_Solomon@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

Dated: May 21, 2003.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 03–17855 Filed 7–14–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,073]

Collins & Aikman Automotive Systems, Marshall, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 30, 2003, the International Union, UAW, Region 1C and Local Union 1294 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 16, 2003, and published in the **Federal Register** on May 1, 2003 (68 FR 23322).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Collins & Aikman Automotive Systems, Marshall, Michigan was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974 was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of vibration dampeners. The company did not import vibration dampeners in the relevant period nor did it shift production to a foreign source.

The union asserts that the company shifted production to Canada, and in support of this, includes a letter dated October 1, 2002 from a former company official who indicates that some plant production previously supplied by the subject plant to an affiliated Canadian facility was outsourced to a Canadian vendor.

A review of the initial investigation revealed that the same company official who provided the letter noted above also provided information to the Department in March of 2003. This information included a table that clearly delineated which customers were responsible for sales losses from the subject plant in the relevant period, and provides exact figures of the volume of sales loss that each customer was responsible for. The table further indicates that a Collin's & Aikman facility in Canada ceased purchasing vibration deadeners from the subject facility, and that this production was ''resourced to another vendor''. However, in context to total plant production, the sales loss to this customer was negligible. Further, in a communication with the Department during the initial investigation, this same company official stated that it was the decline in business from another customer who represented the overwhelming majority of subject plant business that precipitated the shift in production to another domestic facility, and subsequent closure of the subject plant.

The union appears to allege that a significant shift in production to Canada is indicated in a local new article that mentions the closure of two Collins & Aikman domestic plants (including the subject facility) and later states that a Collins & Aikman facility in Ontario, Canada ''took on more business as Collins & Aikman restructured with work transferred from closed plants.'' The union infers that the subject plant must be one of the plants that shifted production to Canada because it is one of two plants mentioned as being closed.

As already indicated, a negligible amount of production was shifted from the subject facility to Canada, albeit not significant enough to contribute significantly to layoffs. Plant closure is predominantly attributable to the decline in business from the subject facility's largest customer and a subsequent decision by the company to shift production from the subject facility to another domestic facility in Ohio.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 27th day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–17822 Filed 7–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,295]

Evening Vision Dresses, Ltd, Also Doing Business as Evening Vision Limited, Evening Visions Apparel, Ltd, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 9, 2003, applicable to workers of Evening Vision Dresses, LTD located in New York, New York. The notice was published in the **Federal Register** on April 24, 2003 (68 FR 20177).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers produce dresses. The review shows that the subject firm also does business under Evening Vision Limited and Evening Vision Dresses at the same New York, New York location.

It is the Department's intent to include all workers of Evening Vision Dresses, LTD, New York, New York, adversely affected by increased imports. Therefore, the Department is amending the certification to include workers whose Unemployment Insurance (UI) wages were reported to Evening Vision Limited and Evening Vision Dresses.

The amended notice applicable to TA–W–51,295 is hereby issued as follows:

All workers of Evening Vision Dresses, LTD, Evening Vision Limited, and Evening Vision Dresses, New York, New York, who became totally or partially separated from employment on or after March 20, 2002, through April 9, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of June 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–17829 Filed 7–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,597 and TA–W–50,597A]

Harriet & Henderson Yarns, Inc., J.D. Plant, and Harriet & Henderson Yarns, Inc., Henderson Plant, Henderson, NC; Notice of Revised Determination on Reconsideration

By application of May 28, 2003 and May 29, 2003, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 30, 2003, based on the finding that imports of open end spun yarn and ring spun yarn did not contribute importantly to worker separations at the subject facilities. The denial notice was published in the **Federal Register** on May 9, 2003 (68 FR 25060).

In their request, the company asked that the subject firm workers be reconsidered for certification on the basis of acting as upstream suppliers to firms under active certification for trade adjustment assistance.

After a review of the subject firm customers on this basis, including several customers not supplied in the original investigation, it was revealed that Harriet & Henderson Yarns, Inc., Henderson Plant, Henderson, North Carolina supplied component parts for polyester cotton fabric produced by Galey and Lord Industries (TA–W–39,945), and a loss of business with this manufacturer contributed importantly to the workers' separation. It was further revealed that Harriet & Henderson Yarns, Inc., J.D. Plant, Henderson, North Carolina supplied component parts for socks and gloves produced by several trade certified firms, and a loss of business with these manufacturers contributed importantly to the workers' separation.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Harriet & Henderson Yarns, Inc., J.D. Plant, Henderson, North Carolina (TA–W–50,597) and Harriet & Henderson Yarns, Inc., Henderson Plant, Henderson, North Carolina (TA–W–50,597A) qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Harriet & Henderson Yarns, Inc., J.D. Plant, Henderson, North Carolina (TA–W–50,597) and Harriet & Henderson Yarns, Inc., Henderson Plant, Henderson, North Carolina (TA–W–50,597A) who became totally or partially separated from employment on or after January 16, 2002, through two years from the date of certification are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of June 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–17825 Filed 7–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,129 and TA–W–50,129A]

IBM Corporation, Global Services Division, Piscataway, NJ, and IBM Corporation, Global Services Division, Middletown, NJ; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 29, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey was signed on March 26, 2003, and published in the **Federal Register** on April 7, 2003 (68 FR 16834).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey engaged in analysis and maintenance of computer software and information systems. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner asserts that the negative decision for the petitioning worker group came as a result of an overly narrow and antiquated interpretation of production as stipulated in the Trade Act. The petitioner also asserts that software is different from services in that one does not need a software ''worker'' to operate software.

Software and information systems are not listed on the Harmonized Tariff Schedule of the United States (HTSUS), published by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes all ''articles'' imported to or exported from the United States. This codification represents an international standard maintained by most industrialized countries as established by the International Convention on the Harmonized Commodity Description and Coding (also known as the HS Convention).

The Trade Adjustment Assistance (TAA) program was established to help workers who produce articles and who lose their jobs as a result of increases in imports of articles like or directly competitive with those produced at the workers' firm.

Throughout the Trade Act an article is often referenced as something that can be subject to a duty. To be subject to a duty on a tariff schedule, an article will have a value that makes it marketable, fungible and interchangeable for commercial purposes. But, although a wide variety of tangible products are described as articles and characterized as dutiable in the HTSUS, software and associated information technology

services are not listed in the HTSUS. Such products are not the type of employment work products that Customs officials inspect and that the TAA program was generally designed to address.

A National Import Specialist was contacted at the U.S. Customs Service to address whether software could be described as an import commodity. The Import Specialist confirmed that electronically transferred material is not a tangible commodity for U.S. Customs purposes. In cases where software is encoded on a medium (such as a CD Rom or floppy diskette), the software is given no import value, but rather evaluated exclusively on the value of the carrier medium. This standard is based on Treasury Decision 85–124 as issued on July 8, 1985 by the U.S. Customs Service. In conclusion, this decision states that ''in determining the customs value of imported carrier media bearing data or instructions, only the cost or value of the carrier medium itself shall be taken into account. The customs value shall not, therefore, include the cost or value of the data or instructions, provided that this is distinguished from the cost or the value of the carrier medium.''

Finally, the North American Industry Classification System (NAICS), published by the U.S. Department of Commerce, designates all manner of custom software applications and software systems, including analysis, development, programming, and integration as ''Services'' (see NAICS #541511 and #541512.)

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–17823 Filed 7–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,350]

Leviton Manufacturing Company, Inc., Hillsgrove Division, Warwick, RI; Notice of Revised Determination on Reconsideration

By application of April 21, 2003, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on March 21, 2003, based on the finding that imports of electrical wiring devices did not contribute importantly to worker separations at the subject plant and that there was no shift to a foreign country. The denial notice was published in the **Federal Register** on April 7, 2003 (68 FR 16833).

To support the request for reconsideration, the company official supplied additional information to supplement that which was gathered during the initial investigation. Upon further review, it was revealed that the company shifted production of electrical wiring devices to Mexico during the relevant period and that this shift contributed importantly to layoffs at the Warwick plant.

Conclusion

After careful review of the facts obtained in the investigation, I determine that there was a shift in production from the workers' firm or subdivision to Mexico of articles that are like or directly competitive with those produced by the subject firm or subdivision, and there has been or is likely to be an increase in imports of like or directly competitive articles. In accordance with the provisions of the Act, I make the following certification:

''All workers of Leviton Manufacturing Company, Inc., Hillsgrove Division, Warwick, Rhode Island who became totally or partially separated from employment on or after December 16, 2001 through two years from the date of certification are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed in Washington, DC this 26th day of June 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–17824 Filed 7–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,587]

Nestle USA, Confections and Snacks Division, Fulton, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on May 23, 2003, applicable to workers of Nestle USA, Confections and Snacks Division located in Fulton, New York. The notice was published in the **Federal Register** on June 19, 2003 (68 FR 36846).

The Department reviewed the certification for workers of the subject firm. The workers produce chocolate crunch, white crunch, chunky and Wonka candy bars.

The review shows that the Department inadvertently set the incorrect impact date. The **Federal Register** notice shows April 14, 2003 as the impact date for TA–W–51,587, and should be April 14, 2002. Therefore, the Department is amending certification to reflect the correct impact date to read April 14, 2002.

The amended notice applicable to TA–W–51,587 is hereby issued as follows:

All workers of Nestle USA, Confections and Snack Division, Fulton, New York, who became totally or partially separated from employment on or after April 14, 2002, through May 23, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of June, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–17826 Filed 7–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,388]

Solid State-Filtronic Incorporated, Compound Semiconductor, Santa Clara, CA; Notice of Revised Determination On Reconsideration

By letter of May 25, 2003, petitioners requested administrative reconsideration of the Department's

denial of Trade Adjustment Assistance (TAA), applicable to workers of Solid State-Filtronics, Compound Semiconductors, Santa Clara, California.

The initial investigation resulted in a negative determination issued on May 6, 2003, based on the finding that imports of wafers used in the company's vertically integrated manufacturing of field effect transistors and monolithic microwave integrated circuits did not contribute importantly to worker separations and there was no shift in production to a country that is party to a Free Trade Agreement, or a Beneficiary Country under the Andean Trade Preference Act, the African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act. The notice was published in the **Federal Register** on May 19, 2003 (68 FR 27107).

In their request for reconsideration, the petitioners supplied information concerning global competition regarding wafers used in the company's vertically integrated manufacturing of field effect transistors and monolithic microwave integrated circuits.

An examination of United States trade data for like or directly competitive products revealed that from 2001 to 2002, aggregate U.S. imports increased dramatically.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Solid State-Filtronics, Compound Semiconductors, Santa Clara, California, were adversely affected by increased imports of articles like or directly competitive with wafers produced at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Solid State-Filtronics, Compound Semiconductors, Santa Clara, California, who became totally or partially separated from employment on or after March 27, 2002, through two years from the date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 1st day of July 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–17830 Filed 7–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,120]

Sun Apparel of Texas, Armour Facility, El Paso, TX; Notice of Determinations Regarding Application for Reconsideration

By application of May 22, 2003, three workers requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on April 7, 2003 and published in the **Federal Register** on April 24, 2003 (68 FR 20177).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Sun Apparel, Armour Facility, El Paso, Texas engaged in the production of patterns, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The subject firm did not increase its reliance on imports of patterns during the relevant period, nor did it shift production to a foreign source.

In the reconsideration process, it was revealed that patterns and markers created at the subject firm were electronically generated and transmitted, and thus do not constitute production within the meaning of Section 222 of the Trade Act of 1974.

The workers allege that other production was performed at the subject facility and imply that some or all of this production work was transferred to a company-owned facility in Mexico in the relevant period.

Aside from the original request for reconsideration, further information was provided by worker representatives. In order to get a comprehensive sense of work performed at the subject facility, the Department requested that both the workers and a company official supply a list of all work functions performed at the subject facility. The Department further requested that the company official indicate whether work functions at the subject facility were shifted to Mexico, or if the company imported products like or directly competitive with those produced at the subject facility in the relevant period.

The workers allege that petitioning workers produced samples (also known as approval garments), and imply that work was shifted to Mexico. They further state that samples were shipped directly to customers in the U.S.

A company official was contacted on this point and reported that samples were and are produced at the subject facility. However, sample production has never occurred at the Mexican affiliate, so no production of samples was shifted. Further, the company does not import samples. (As samples are produced for internal use, there is no issue in regard to customer imports.)

Workers allege that the ''Print Shop'' at the subject facility produced jokers (waist band labels) and stickers (leg stickers used to designate size).

The company official contacted affirmed that print shops producing like or directly competitive stickers were located at both the Amour and Mexican facilities, and that the company elected to close the Amour Print Shop and rely exclusively on the Mexican production in this area.

The workers describe the typical functions involved in the Shipping and Receiving Department. They also list several manufacturing labels that they serviced in this department.

As the title implies, the functions concerned with shipping and receiving were not involved with production. Aside from the sample production, almost all of the production handled by this department concerned Mexican production, although a very small amount concerned cutting production that was performed at another El Paso facility. Thus workers engaged in shipping and receiving at the subject facility performed services mainly for a foreign production facility.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

The workers then address the nature of the production performed at the subject facility, which includes the Pattern Making Department, the Cutting Department, and the Sewing Department. In this section, the workers

also address laundering, inspection, packing and shipping.

The company official maintained that, aside from miscellaneous sewing repair, sample production, and print shop production, no production occurred at the subject facility. The departments and functions described by workers in the line of production were performed mainly for sample production, with the exception of miscellaneous repairs.

Workers also describe a Trim Department involving functions performed ''specifically for audit'' purposes, which involved checking to see that ''orders for * * * accessories were distributed correctly here and in El Paso.''

As described by the workers, the Trim Department does not involve production, but performance of a service.

Finally, the workers allege that they trained workers in similar functions as those performed at the subject facility, although no specific functions were noted.

The company official did not deny that there was some similarity in work functions such as production in the Print Shop. However, she did affirm that no production occurred at the subject facility aside from sample production and print shop production.

In the original request for reconsideration, the workers state that the subject firm was previously certified for trade adjustment assistance, and that the basis for previous certification should be used to establish eligibility of the current petitioning worker group. The workers also appear to allege that they performed regular production of apparel for a specific customer, and not just sample production.

Workers producing jeans and laundering jeans at the subject facility were previously certified for trade adjustment assistance (TA–W–37,187 and TA–W–37,412, respectively). The last active certification, TA–W–37,412, expired on July 7, 2002. By the date of the above certification (July 7, 2000), a company official confirmed that all mass production of apparel had been shifted from the subject facility to Mexico. As this shift occurred outside the relevant period, it cannot be used to certify the current worker group. In the current investigation, it was reconfirmed by a company official that the subject facility produces apparel for sample purposes only and that all other apparel production was shifted from the subject facility in 2000.

Finally, to support their claim of a production shift, worker representatives attached a series of statements from subject firm workers who performed machine operations, supervision, labeling, shipping and receiving, and repair and maintenance of equipment at the Amour facility. One worker statement appears to claim that work was shifted to Mexico, Canada and Japan.

In regard to specific statements made by employees that they were engaged in production and that production shifted, the company confirmed that the only production at the subject facility was for samples and print shop labels, and that there was no shift in production of samples or imports of samples.

Workers are separately identifiable between workers in the Print Shop and all other workers at the subject facility.

It has been determined with respect to workers at Sun Apparel, Armour Facility, Print Shop, El Paso, Texas that all of the criteria have been met.

It has been determined with respect to all other workers at Sun Apparel, Armour Facility, El Paso, Texas that criteria I.C and II.B have not been met.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that there was a shift in production from Sun Apparel, Armour Facility, Print Shop, El Paso, Texas to Mexico of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of Sun Apparel, Armour Facility, Print Shop, El Paso, Texas, who became totally or partially separated from employment on or after January 8, 2002 through two years from the date of certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974. and;

I further determine that all other workers at Sun Apparel, Amour Facility, El Paso, Texas, are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–17827 Filed 7–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,130]

Tyler Refrigeration, Carrier Commercial Refrigeration, Carrier Corporation, Waxahachie, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 15, 2003, applicable to workers of Tyler Refrigeration, Waxahachie, Texas. The notice was published in the **Federal Register** on June 3, 2003 (68 FR 33195).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of refrigerated food display cases.

Information shows that Carrier Corporation is the parent firm of Tyler Refrigeration. Information also shows that workers separated from employment at the subject firm had their wages reported under separate unemployment insurance (UI) tax accounts for Carrier Commercial Refrigeration, Carrier Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Tyler Refrigeration who were adversely affected by increased imports.

The amended notice applicable to TA–W–51,130 is hereby issued as follows:

All workers of Tyler Refrigeration, Carrier Commercial Refrigeration, Carrier Corporation, Waxahachie, Texas, who became totally or partially separated from employment on or after March 7, 2002, through May 15, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Dated: Signed at Washington, DC, this 3rd day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–17828 Filed 7–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of ''The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 15, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Expenditure (CE) Surveys collect data on consumer expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and to obtain data for future CPI revisions. The CE Surveys have been ongoing since 1979.

The data from the CE Surveys are used (1) for CPI revisions, (2) to provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation, and (3) to provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. Public and private users of price statistics, including Congress and the economic policymaking agencies of the Executive branch, rely on data collected in the CPI in their day-to-day activities. Hence, data users and policymakers widely accept the need to improve the process used for revising the CPI. If the CE Surveys were not conducted on a continuing basis, current information necessary for more timely, as well as more accurate, updating of the CPI would not be available. In addition, data would not be available to respond to the continuing demand from the public and private sectors for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample is interviewed every three months over five calendar quarters. The sample for each quarter is divided into three panels, with CUs being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures that respondents can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey are either relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills, or insurance premiums.

The Diary (or recordkeeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The BLS and the Census Bureau have converted the paper and pencil CE Diary Household Characteristics Questionnaire to a computer assisted personal interview (CAPI) instrument. The CE Diary Household Characteristics CAPI instrument will be implemented in January 2004.

Several changes were made in the CAPI version of the CE Diary Household Characteristics Questionnaire. The implementation of CAPI allowed for several enhancements of the survey.

The race and ethnicity questions have been fully implemented in the Diary CAPI in accordance with the Office of Management and Budget's (OMB) 1997 published ''Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity.'' The placement and exact wording of these questions were based on consultations with the interagency group formed to study the implementation of these standards, in an effort to maintain comparability with other household surveys collecting this information. The race and ethnicity questions were fully implemented in the CE Quarterly Interview CAPI Survey in April 2003.

For Diary 2004, as part of the implementation of CAPI, other changes will be made. The Diary CAPI instrument will have five sections. The first four sections are similar to the current CE–802 with some changes. The fifth section is a questionnaire assessment that includes questions for the respondent about the task of filling out the diaries and for the field representative about the case in general.

The changes for the Diary Household Characteristics Questionnaire include the deletion of some questions in Section 2, the reduction of the number of recall questions from 11 to 4 in Section 3, and the implementation of brackets or income categories in Section 4. The BLS implemented the brackets in the income sections of the Quarterly Interview Survey in 2001.

Minor changes will also be made to the CE Quarterly Interview CAPI Instrument. ''Hobbies'' will be changed to ''Arts and Crafts'' to more clearly

indicate what types of expenditures should be reported. The types of expenditures collected in Section 20B, Haircutting will be expanded also for clarification. Added to this question will be wording regarding manicures and other salon services. For utilities, the quantity consumed and the unit of measure questions will be deleted. And finally, money put into educational savings accounts will be collected separately in its own question in Section 22G.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Number: 1220–0050.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden hours
CE Quarterly Interview CAPI Instrument	9,629	4	38,516	90	57,774
Quarterly Interview Reinterview	2,118	1	2,118	15	530
CE Diary: CE–802 Household Questionnaire	7,745	3	23,235	25	9,681
CE Diary: CE–801, Record of Your Daily Expenses	7,745	2	15,490	105	27,108
CE Diary Reinterview CE–880 CE–880(N)	1,293	1	1,293	12	259
Totals	17,374		80,652		95,352

Please note: Reinterview respondents are a subset of the original number of respondents for each survey. Therefore, they are not counted again in the totals. Also, for the Diary, the ''Record of Your Daily Expenses'' respondents are the same as the ''Household Questionnaire'' respondents.

Affected Public: Individuals or households.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 3rd day of July, 2003.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–17821 Filed 7–14–03; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

July 9, 2003.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Deputy for Guidelines & Panel Operations, A.B. Spellman 202/682–5421. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202/682–5496 between 10 a.m. and 4 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Office of Management and Budget is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology/and assumptions used.

Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION:

Agency: National Endowment for the Arts.

Title: Panelist Profile Form.

Frequency: Every three years.

Affected Public: Individuals.

Estimated Number of Respondents: 250.

Total Burden Hours: 25.

Total Annualized Capital/Start Up Costs: 0.

Total Annual Cost (Operating/Maintaining systems or Purchasing Services): 0.

The National Endowment for the Arts enriches our nation and its diverse cultural heritage by supporting works of artistic excellence, advancing learning in the arts, and strengthening the arts in communities throughout the country.

With the advice of the National Council on the Arts and advisory panels, the Chairman establishes eligibility requirements and criteria for the review of applications for funding. Section 959(c) of the Endowment's enabling legislation, as amended, directs the Chairman to utilize advisory panels to review applications and to make recommendations to the National Council on Arts, which in turn makes recommendations to the Chairman.

The legislation requires the Chairman ''(1) to ensure that all panels are composed, to the extent practicable, of individuals reflecting a wide geographic, ethnic, and minority representation as well as to (2) ensure that all panels include representation by lay individuals who are knowledgeable about the arts * * *'' In addition, the membership of each panel must change substantially from year to year and each individual is ineligible to serve on a panel for more than 3 consecutive years. To assist with efforts to meet these legislated mandates regarding representation on advisory panels, the endowment has established an Automated Panel Bank System (APBS), a computer database of names, addresses, areas of expertise and other basic information on individuals who are qualified to serve as panelists for the Arts Endowment.

The Panelist Profile Form, for which clearance is requested, is used to gather

basic information from qualified individuals recommended by the arts community; arts organizations; Members of Congress; the general public; local, state, and regional arts organizations; Endowment staff; and others.

Murray Welsh,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 03–17784 Filed 7–14–03; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580–MLA–2; ASLBP No. 03–813–04–MLA]

Fansteel, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, *see* 37 Fed. Reg. 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: Fansteel, Inc., Muskogee, Oklahoma (Materials License Amendment).

The hearing will be conducted pursuant to 10 CFR part 2, subpart L, of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a request for hearing submitted on June 16, 2003, by the Attorney General of the State of Oklahoma in response to the asserted request of Fansteel, Inc., to amend its 10 CFR part 40 source material license to allow decommissioning of its facility located in Muskogee, Oklahoma.

The Presiding Officer in this proceeding is Administrative Judge G. Paul Bollwerk, III. All correspondence, documents, and other materials shall be filed with Judge Bollwerk in accordance with 10 CFR 2.1203. His address is: G. Paul Bollwerk, III, Administrative Judge, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 9th day of July 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–17847 Filed 7–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of July 14, 21, 28, August 4, 11, 18, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 14, 2003

Thursday, July 17, 2003

12:30 p.m.—Discussion of Management Issues (Closed-Ex.2)

Week of July 21, 2003—Tentative

There are no meetings scheduled for the Week of July 21, 2003.

Week of July 28, 2003—Tentative

There are no meetings scheduled for the Week of July 28, 2003.

Week of August 4, 2003—Tentative

There are no meetings scheduled for the Week of August 4, 2003.

Week of August 11, 2003—Tentative

There are no meetings scheduled for the Week of August 11, 2003.

Week of August 18, 2003—Tentative

There are no meetings scheduled for the Week of August 18, 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: *http://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: July 10, 2003.

Sandy Joosten,

Executive Assistant, Office of the Secretary.

[FR Doc. 03–17939 Filed 7–11–03; 11:10 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in July 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in August 2003. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the third quarter (July through September) of 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the ''required interest rate'') in determining a single-employer plan's variable-rate premium. The required interest rate is the ''applicable percentage'' (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in July 2003 is 4.37 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between August 2002 and July 2003.

For premium payment years beginning in—	The required interest rate is—
August 2002	5.39
September 2002	5.08
October 2002	4.76
November 2002	4.93
December 2002	4.96
January 2003	4.92
February 2003	4.94
March 2003	4.81
April 2003	4.80
May 2003	4.90
June 2003	4.53
July 2003	4.37

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 2003, as announced by the IRS, is 5 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	9/30/03	5

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the third quarter (July through September) of 2003 (*i.e.,* the rate reported for June 16, 2003) is 4.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From—	Through—	Interest rate (percent)
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	9/30/03	4.25

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in August 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of July, 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–17844 Filed 7–14–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48140; File No. SR–MSRB–2003–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board To Amend Rule A–14, on Annual Fees

July 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''the Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2003 the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') 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 Board. 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 MSRB is proposing to amend Rule A–14, which provides for an annual fee paid by dealers to the MSRB. The MSRB requests the MSRB requests that the proposed rule change become effective prior to the beginning of the Board's fiscal year of 2004 (October 1,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2003). Below is the text of the proposed rule change. Proposed new language is italicized, deletions are in brackets.

* * * * *

Rule A–14: Annual Fee

In addition to any other fees prescribed by the rules of the Board, each broker, dealer and municipal securities dealer shall pay an annual fee to the Board of [$200] *$300,* with respect to each fiscal year of the Board in which the broker, dealer or municipal securities dealer conducts municipal securities activities. Such fee must be received at the office of the Board no later than October 31 of the fiscal year for which the fee is paid, accompanied by the invoice sent to the broker, dealer or municipal securities dealer by the Board, or a written statement setting forth the name, address and Commission registration number of the broker, dealer or municipal securities dealer on whose behalf the fee is paid.

* * * * *

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 Board 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 Board 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 help provide sufficient revenues to fund Board operations and to allocate fees among dealers in a manner that, compared to the current fee structure, more accurately reflects each dealer's involvement in the municipal securities market. The proposed rule change would accomplish these purposes by amending Rule A–14 to increase the annual fee assessed to dealers from $200 to $300 per dealer.

The MSRB currently levies three types of fees that are generally applicable to dealers. Rule A–12 provides for a $100 initial fee paid once by a dealer when it enters the municipal securities business. Rule A–13 provides for an underwriting fee of $.03 per $1000 par value of bonds and $.01 per $1000 par value of notes, and a transaction fee of $.005 per $1000 par value. Rule A–14 provides for an annual fee of $200 from each dealer who conducts municipal securities activities. The annual fee imposed by Rule A–14 was last increased from $100 to $200 in 1996.

The MSRB has reviewed its revenue structure on a number of occasions in the past to ensure that the fee structure reflects a firm's activity within the industry. The MSRB believes that its fees are not levied for a single purpose but for general purposes, since MSRB regulatory activities affect all participants in the dealer community. Over the last six years, the proportion of MSRB revenues derived from the underwriting assessment and the transaction fee has grown dramatically while the proportion from the annual fee has declined. A number of dealers that do not participate in traditional municipal securities underwriting activities or are not actively involved in the trading of traditional municipal securities effectively only pay a small annual fee of $200 to the MSRB. For example, firms that primarily effect transactions in a new product, municipal fund securities, only pay the annual fee because such transactions are exempt from underwriting and transaction fees. The MSRB believes that these firms should pay a higher proportion of the regulatory fees.

To redress this imbalance, the MSRB has determined to raise the annual fee from $200 to $300. We anticipate that the proposed rule change will result in an increase of $250,000 to the MSRB's revenues in fiscal year 2004. The proposed rule change will enhance the equitable distribution of fees among dealers in the municipal securities market and increase the MSRB's revenue to accommodate the increased costs associated with regulating municipal fund securities activities.

2. Basis

The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(J) of the Act, which requires, in pertinent part, that the Board's rules shall:

> Provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

The proposed rule change provides for reasonable fees, based on dealer involvement in the municipal securities market that are necessary to defray Board expenses.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change by Members, Participants, or Others

Written comments were neither solicited not received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the 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 submissions, 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 the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB–2003–06 and should be submitted by August 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–17786 Filed 7–14–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4401]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the eleven letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: July 2, 2003.

Peter J. Berry,

Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

U.S. Department of State

Washington, DC 20520
April 30, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 243 M–24 7.62 x 51mm bolt action centerfire rifles and associated equipment to the Colombian Ministry of National Defense for use by the Colombian Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 030–03.

The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

U.S. Department of State

Washington, DC 20520
May 16, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to Germany for the production of the AN/APG–65 radar system and related equipment for end-use by the Governments of Germany, Greece and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 009–03.

U.S. Department of State

Washington, DC 20520
May 16, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical assistance and hardware to the United Kingdom related to the production of castings and structural parts for the 155mm Howitzer.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 013–03.

U.S. Department of State

Washington, DC 20520
May 16, 2003.
The Honorable Richard G. Lugar,
Chairman, Committee on Foreign Relations, United States Senate.

Dear Mr. Chairman: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Canada and the United Kingdom related to management data terminals of the BOWMAN communications system for ultimate end-use by the United Kingdom Ministry of Defence.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 015–03.

U.S. Department of State

Washington, DC 20520
May 16, 2003.
The Honorable Richard G. Lugar,
Chairman, Committee on Foreign Relations, United States Senate.

Dear Mr. Chairman: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the export to Norway of technical data and assistance in the manufacture of the high explosive shaped main charge warhead for the Javelin Missile System for end-use by the United States.

The United States Government is prepared to license the export of these items having

[3] 17 CFR 200.30–3(a)(12).

taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 019–03.

U.S. Department of State

Washington, DC 20520
May 16, 2003.
The Honorable Richard G. Lugar,
Chairman, Committee on Foreign Relations, United States Senate.

Dear Mr. Chairman:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Japan to support the manufacture, assembly and training of ten AH–64D Apache Longbow helicopters with associated spares and support equipment for the Government of Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 020–03.

U.S. Department of State

Washington, DC 20520
May 19, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the export to South Africa of technical data and assistance in the manufacture of towed, turreted, and self-propelled artillery ammunition for end-use by the U.S. Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 018–03.

U.S. Department of State

Washington, DC 20520
May 22, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to Poland of technical data, defense services and defense articles for the manufacture of three hundred thirteen LAV–30 turrets for use in armored personnel carriers by the Government of Poland.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 017–03.

U.S. Department of State

Washington, DC 20520
May 22, 2003.
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Mexico of technical data, defense services and defense articles for the manufacture of additional Line Replaceable Module electrical connector backplanes for end-use by the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 025–03.

U.S. Department of State

Washington, DC 20520
The Honorable J. Dennis Hastert,
Speaker of the House of Representatives.

U.S. Department of State

Washington, DC 20520
May 22, 2003.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the sale, integration, operation, repair, testing, training and maintenance of Paveway II and Paveway III Weapon Systems on F–4, F–5 and F–16 aircraft owned and operated by the Republic of Korea Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 033–03

U.S. Department of State

Washington, DC 20520
May 27, 2003.
The Honorable Richard G. Lugar,
Chairman, Committee on Foreign Relations, United States Senate.

Dear Mr. Chairman: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification concerns exports of technical data and defense services for delivery of the Thuraya-D3 Satellite to the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 031–03

[FR Doc. 03–17783 Filed 7–14–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4354]

Cultural Property Advisory Committee Notice of Meeting

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) there will be a meeting of the Cultural Property Advisory Committee on Tuesday, July 29, 2003, from approximately 9 a.m. to 5 p.m., and on Wednesday, July 30, 2003, from approximately 9 a.m. to 1 p.m., at the United States Department of State, Annex 44, 301 4th St., SW., Washington, DC. Pursuant to 19 U.S.C. 2603(c)(3), the Committee is requested to review the possible extension of the Emergency Import Restrictions Imposed on Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus, promulgated on April 12, 1999. This portion of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B).

The Committee's agenda will also include briefings on internal procedures. This portion of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(2). In addition, the Committee will have an open session to receive comments from interested parties regarding the possible extension of this emergency import restriction. This open portion of the meeting will be held from approximately 9:30 to 10:30 p.m. on July 30.

Seating is limited. Persons wishing to attend this open portion of the meeting must notify the Cultural Property office at (202) 619–6612 by 5 p.m. (EDT) Wednesday, July 23, 2003, to arrange for admission. Persons wishing to present oral comments at the open portion of the meeting, or to submit written comments for the Committee's consideration, must provide them in writing by 5 p.m., (EDT) July 23, 2003. All comments may be faxed to (202) 260–4893. Oral presentations will be limited to ensure time for the Committee to pose questions. Information about the Convention on Cultural Property Implementation Act and the subject emergency import restrictions may be found at *http://exchanges.state.gov/culprop.*

Dated: July 7, 2003.

Patricia S. Harrison,
Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–17781 Filed 7–14–03; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–41]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 4, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; US Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to http://www.regulations.gov. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Susan Boylon, (425–227–1152), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 8, 2003.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11998.
Petitioner: Bombardier Aerospace.
Section of 14 CFR Affected: 25.785(b).
Description of Relief Sought: Request an amendment to Exemption No. 7884, to remove the limitation restricting applicability to airplanes manufactured prior to January 1, 2004. Exemption No. 7884 granted certain relief from the general occupant protection requirements on Model BD100–1A10 Global Express airplanes.

Docket No.: FAA–2002–13385.
Petitioner: Bombardier Aerospace.
Section of 14 CFR Affected: 25.785(b).
Description of Relief Sought: Request an amendment to Exemption No. 7120B, to remove the limitation restricting applicability to airplanes manufactured prior to January 1, 2004. Exemption No. 7120B granted certain relief from the general occupant protection requirements on Model BD700–1A10 Global Express airplanes.

[FR Doc. 03–17759 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Hartsfield Atlanta International Airport, Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PFC at Hartsfield Atlanta International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 14, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Art Bacon, Aviation Business Manager of the City of Atlanta's Department of Aviation at the following address: Art Bacon, Aviation Business Manager, City of Atlanta, Department of Aviation, PO Box 20509, Atlanta, GA 30320–2509.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Atlanta under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Terry Washington, P.E., Program Manager, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, Telephone Number: 404–305–7143. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at ATL under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On Thursday, July 3, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Atlanta was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 1, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–04–C–00–ATL.

Level of the PFC: $4.50.

Charge effective date: October 1, 2013.

Proposed charge expiration date: January 2015.

Total estimated PFC revenue: $308,565,000.

Brief description of proposed project(s): Automated Hold Baggage Screening.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) when enplaining revenue passengers in limited, irregular, special service operations.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Atlanta's Department of Aviation.

Issued in Atlanta, Georgia on Thursday, July 3, 2003.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 03–17767 Filed 7–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34342]

Kansas City Southern—Control—The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Decision No. 3 in STB Finance Docket No. 34342; Notice of Public Hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing in this case on Thursday, July 31, 2003, in Washington, DC. The hearing will provide a forum for interested persons to express their views on the matters at issue in this proceeding. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Thursday, July 31, 2003. Persons wishing to speak at the hearing should file with the Board a written notice of intent to speak (and should indicate a requested time allotment) as soon as possible but no later than July 23, 2003. Written statements by persons speaking at the hearing may be submitted prior to the hearing but are not required. Persons wishing to submit written statements should do so by July 25, 2003.

ADDRESSES: An original and 10 copies of all notices of intent to speak and any written statements should refer to STB Finance Docket No. 34342 and should be sent to: Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1655. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Kansas City Southern (KCS), which is a holding company and not a railroad, now controls two U.S. railroads: The Kansas City Southern Railway Company and Gateway Eastern Railway Company. By application filed with the Board on May 14, 2003, KCS seeks the approval of the Board to control a third U.S. railroad: The Texas Mexican Railway Company (Tex Mex or TM). In a decision (Decision No. 2) which was served on June 9, 2003, and which was published in the **Federal Register** on June 13, 2003 (at 68 FR 35474), the Board accepted the ''KCS/TM'' application and set a procedural schedule for the processing of that application. That schedule provides, among other things, that the Board's final decision on the KCS/TM application will be served on October 17, 2003 (if no environmental review is required and no oral argument is held).

The Board said in Decision No. 2 that a public hearing at which members of the public could voice their views regarding the KCS/TM application would be held in July 2003. The Board noted in Decision No. 2 that, whereas an oral argument is a formal affair at which lawyers representing parties are expected to express ''legal'' views regarding disputed matters, a public hearing is somewhat informal and the views expressed at a public hearing are not expected to be ''legal'' arguments. The Board is interested in hearing what members of the public have to say about any matter connected with the KCS/TM application.

Date/Time/Place of Hearing

The hearing will be held on Thursday, July 31, 2003, beginning at 10 a.m., in Room 760, the Board's hearing room, on the 7th Floor at the Board's headquarters in the Mercury Building, 1925 K Street, NW (on the northeast corner of the intersection of 20th St., NW, and K Street, NW), Washington, DC

Notice of Intent To Speak

Persons wishing to speak at the hearing should file with the Board a written notice of intent to speak, and should indicate a requested time

allotment, as soon as possible but no later than July 23, 2003.

Written Statements

Persons wishing to submit written statements should do so by July 25, 2003.

Paper Copies

Persons intending to speak at the hearing and/or to submit written statements prior to the hearing should submit an original and 10 paper copies, respectively, of their notices and/or written statements.

Board Releases Available Via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's Web site at *''http://www.stb.dot.gov.''*

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: July 9, 2003.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 03–17839 Filed 7–14–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34335]

Keokuk Junction Railway Company—Feeder Line Acquisition—Line of Toledo Peoria and Western Railway Corporation Between La Harpe and Hollis, IL

AGENCY: Surface Transportation Board.

ACTION: Notice of acceptance of feeder line application and institution of proceeding.

SUMMARY: Subject to compliance with the requirements of 49 CFR 1105.7 (environmental report), the Surface Transportation Board (Board) is accepting for filing an application submitted by Keokuk Junction Railway Company (KJRY). KJRY seeks to acquire, from Toledo, Peoria and Western Railway Corporation (TP&W), a 76-mile rail line between milepost 194.5 near La Harpe and milepost 118.5 at Hollis, IL (La Harpe-Hollis Line), and the Mapleton Industrial Spur and Wye Facilities (Mapleton Spur), a 2.5-mile line connected to the La Harpe-Hollis Line at milepost 121.5 at or near Kolbe, IL. Alternatively, KJRY seeks to acquire only the La Harpe-Hollis Line. The application was filed under the Feeder Railroad Development Program, 49 U.S.C. 10907 and 49 CFR Part 1151.

DATES: Competing applications must be filed by August 14, 2003; verified statements and comments addressing the initial and/or any competing applications must be filed by September 15, 2003; and verified replies by applicants and other interested parties must be filed by October 6, 2003. The Board will issue a decision on the merits after consideration of any competing applications, verified statements, comments, and verified replies that are submitted.

ADDRESSES: Send an original and 10 copies of any competing applications, verified statements, comments, and verified replies referring to STB Finance Docket No. 34335 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any competing applications, verified statements, comments, and verified replies to (1) applicants' representatives: William A. Mullins and David C. Reeves, 401 Ninth Street, NW., Washington, DC 20004–2134; and (2) TP&W's representatives: Gary A. Laakso, 5300 Broken Sound Boulevard NW., Boca Raton, FL 33487 and Louis E. Gitomer, 1455 F Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800–877–8339.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10907(b)(1), the Board is authorized to require the sale of a rail line to a financially responsible person if the public convenience and necessity permit or require the sale. KJRY contends that the proposed sale is required under the public convenience and necessity criteria, 49 U.S.C. 10907(c)(1)(A)–(E), and that it is a financially responsible person willing to pay not less than the constitutional minimum value of both the La Harpe-Hollis Line and Mapleton Spur or only the La Harpe-Hollis Line.

KJRY filed a feeder line application April 9, 2003, and a supplement to that application on June 9, 2003, offering to purchase the La Harpe-Hollis Line and Mapleton Spur for an estimated going concern value of $3,461,434. Alternatively, KJRY offers to purchase only the 76-mile La Harpe-Hollis Line for an estimated net liquidation value of $3,284,605. Under the latter offer, TP&W would retain exclusive access to, and all the revenues from, the Mapleton Spur and would receive without charge trackage rights over KJRY between Hollis and the Mapleton Spur.

Subject to KJRY's compliance with the requirements of 49 CFR 1105.7, KJRY has submitted sufficient information to meet the requirements of 49 CFR 1151.3. The Board will rule on the merits of the application as amended when the record is complete.

Copies of the application and supplement may be obtained free of charge by contacting applicant's representatives. Alternatively, the application and supplement may be inspected at the offices of the Surface Transportation Board, Room 755, during normal business hours, or a copy of the application and supplemental filing may be obtained from the Board's Web site at *HTTP://WWW.STB.DOT.GOV.*

Copies of the Board's decision may be purchased from Da–2–Da Legal Copy Service by calling 202–293–7776 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339) or visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: July 1, 2003.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–17840 Filed 7–14–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34367]

Portland & Western Railroad, Inc. and Willamette & Pacific Railroad, Inc.—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railway Company (UP) has agreed to grant trackage rights to Portland & Western Railroad, Inc. (PNWR) and Willamette & Pacific Railroad, Inc. (WPRR) over 0.29 miles of rail line between UP's Albany Yard (milepost 691.24) and the point of connection with the former Oregon Electric Line [1] currently being leased by PNWR in Albany, OR (milepost 691.53), and approximately 0.20 miles of rail

[1] PNWR's lease of the connecting portion of the Oregon Electric Line from The Burlington Northern and Santa Fe Railway Company (BNSF) was authorized by the Board in *Portland and Western Railroad, Inc.—Lease and Operation Exemption—The Burlington Northern Santa Fe Railway Company*, STB Finance Docket No. 34255 (STB served Jan. 3, 2003).

line constituting the north leg of the wye track connecting the Toledo Branch and the UP Main Line near milepost 691.35, in Oregon.

The transaction was scheduled to be consummated on or after July 2, 2003.

The purpose of the trackage rights is to allow improved access to the Oregon Electric Line that PNWR is leasing from BNSF, and to provide for more fluid yard and interchange operations among WPRR, PNWR, and other carriers.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34367 must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Four Penn Center Plaza, 1600 John F. Kennedy Blvd., Suite 200, Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *''http://www.stb.dot.gov.''*

Dated: Decided: July 2, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–17346 Filed 7–14–03; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 68, No. 135

Tuesday, July 15, 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

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1472–F]

RIN 0938–AL92

Medicare Program; Prospective Payment System for Long-Term Care Hospitals: Annual Payment Rate Updates and Policy Changes

Correction

In rule document 03–14078 beginning on page 34122 in the issue of Friday, June 6, 2003, make the following correction:

Due to numerous errors, Table 2 beginning on page 34181, is being reprinted in its entirety.

TABLE 2.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004

Nonurban Area	Full Wage Index [1]	⅕th Wage Index [2]	⅖th Wage Index [3]
Alabama	0.7660	0.9532	0.9064
Alaska	1.2293	1.0459	1.0917
Arizona	0.8493	0.9699	0.9397
Arkansas	0.7666	0.9533	0.9066
California	0.9899	0.9980	0.9960
Colorado	0.9015	0.9803	0.9606
Connecticut	1.2394	1.0479	1.0958
Delaware	0.9128	0.9826	0.9651
Florida	0.8827	0.9765	0.9531
Georgia	0.8230	0.9646	0.9292
Hawaii	1.0255	1.0051	1.0102
Idaho	0.8747	0.9749	0.9499
Illinois	0.8204	0.9641	0.9282
Indiana	0.8755	0.9751	0.9502
Iowa	0.8315	0.9663	0.9326
Kansas	0.7900	0.9580	0.9160
Kentucky	0.8079	0.9616	0.9232
Louisiana	0.7580	0.9516	0.9032
Maine	0.8874	0.9775	0.9550
Maryland	0.8946	0.9789	0.9578
Massachusetts	1.1288	1.0258	1.0515
Michigan	0.9009	0.9802	0.9604
Minnesota	0.9151	0.9830	0.9660
Mississippi	0.7680	0.9536	0.9072
Missouri	0.7881	0.9576	0.9152
Montana	0.8481	0.9696	0.9392
Nebraska	0.8204	0.9641	0.9282
Nevada	0.9577	0.9915	0.9831
New Hampshire	0.9839	0.9968	0.9936

TABLE 2.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2003 THROUGH JUNE 30, 2004—Continued

Nonurban Area	Full Wage Index [1]	1/5th Wage Index [2]	2/5th Wage Index [3]
New Jersey [4]	.....	.....	.....
New Mexico	0.8872	0.9774	0.9549
New York	0.8542	0.9708	0.9417
North Carolina	0.8669	0.9734	0.9468
North Dakota	0.7788	0.9558	0.9115
Ohio	0.8613	0.9723	0.9445
Oklahoma	0.7590	0.9518	0.9036
Oregon	1.0259	1.0052	1.0104
Pennsylvania	0.8462	0.9692	0.9385
Puerto Rico	0.4356	0.8871	0.7742
Rhode Island [4]	.....	.....	.....
South Carolina	0.8607	0.9721	0.9443
South Dakota	0.7815	0.9563	0.9126
Tennessee	0.7877	0.9575	0.9151
Texas	0.7821	0.9564	0.9128
Utah	0.9312	0.9862	0.9725
Vermont	0.9345	0.9869	0.9738
Virginia	0.8504	0.9701	0.9402
Washington	1.0179	1.0036	1.0072
West Virginia	0.7975	0.9595	0.9190
Wisconsin	0.9162	0.9832	0.9665
Wyoming	0.9007	0.9801	0.9603

[1] Pre-reclassification wage index from Federal FY 2003 based on fiscal year 1999 audited acute care hospital inpatient wage data that exclude wages for services provided by teaching physicians, residents, and nonphysician anesthetists under Part B of the Medicare program.

[2] One-fifth of the full wage index value, applicable for LTCH's cost reporting period beginning on or after October 1, 2002 through September 30, 2003 (Federal FY 2203). For example, for a LTCH's cost reporting period begins during Federal in FY 2003 and located in rural Illinois, the 1/5th of the wage index value is computed as (0.8204 + 4)/5 = 0.9641. For further details on the 5-year phase-in of the wage index, see section VI.C.1. of this final rule.

[3] Two-fifths of the full wage index value, applicable for LTCH's cost reporting period beginning on or after October 1, 2003 through September 30, 2003 (Federal FY 2004). For example, for a LTCH's cost reporting period begins during Federal in FY 2004 and located in rural Illinois, the 2/5th of the wage index value is computed as ((2*0.8204) + 3))/5 = 0.9282. For further details on the 5-year phase-in of the wage index, see section VI.C.1. of this final rule.

[4] All counties within the State are classified as urban.

[FR Doc. C3–14078 Filed 7–14–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AD03

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS), Document Incorporated by Reference for Fixed Platforms

Correction

In rule document 03–17192 beginning on page 41077, in the issue of Thursday, July 10, 2003 make the following correction:

PART 250—[CORRECTED]

On page 41078, in the first column, amendatory instruction 2. is corrected to read as follows: '' In section 250.912 the first sentence of paragraph (a) is revised to read as follows:''.

[FR Doc. C3–17192 Filed 7–14–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–317–AD; Amendment 39–13125;AD 2003–08–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL7–601–3A, CL–601–3R, and CL–604) Series Airplanes

Correction

In rule document 03–9690 beginning on page 19940 in the issue of Wednesday, April 23, 2003 make the following corrections:

§39.13 [Corrected]

1. On page 19944, in the first column, in §39.13, in the second table, the heading, ''Table 5— Compliance Time for TLMCs'' should read ''Table—Compliance Time for TLMCs''.

2. On the same page, in the second column, in the same section, in the first table, the heading, ''Table 5—Compliance Time for TLMCs—Continued'' should read ''Table—Compliance Time for TLMCs—Continued''.

3. On the same page, in the same column, in the same section, in the second table, the heading, ''Table 6—IBR Alert Service Bulletins'' should read ''Table 5—IBR Alert Service Bulletins''.

4. On the same page, in the third column, in the same section, in the table, the heading, ''Table 6—IBR Alert Service Bulletins—Continued'' should read ''Table 5—IBR Alert Service Bulletins—Continued''.

[FR Doc. C3–9690 Filed 7–14–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 15, 2003

Part II

Department of Agriculture

Forest Service

36 CFR Parts 219 and 294

National Forest System Land and Resource Management Planning; Special Areas; Roadless Area Conservation; Proposed Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 219 and 294

RIN 0596–AC05

National Forest System Land and Resource Management Planning; Special Areas; Roadless Area Conservation

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: On July 10, 2001, the Forest Service published an advance notice of proposed rulemaking (ANPR) seeking public comment concerning how best to proceed with long-term protection and management of inventoried roadless areas. The 2001 ANPR expressed the Department's belief that inventoried roadless areas contain important environmental values that warrant protection, and identified a set of principles that would guide the Department in addressing this subject. This second ANPR solicits further public input concerning the applicability of the roadless area conservation rule to both the Tongass and the Chugach National Forests in Alaska. In conjunction with this second ANPR, a proposed rule has been published elsewhere in the same part of today's **Federal Register** that would amend the roadless area conservation rule's application to the Tongass National Forest. The agency is publishing the proposed rule and this ANPR in order to fulfill part of the Department's obligations under the June 10, 2003 settlement agreement for *State of Alaska* v. *USDA,* while also maintaining the ecological values of inventoried roadless areas in the Tongass and Chugach National Forests.

In *State of Alaska* v. *USDA,* the State of Alaska and other plaintiffs alleged that the roadless rule violated a number of federal statutes, including the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Passed overwhelmingly by Congress in 1980, ANILCA sets aside millions of acres in Alaska for the National Park Service, Forest Service, National Monuments, National Wildlife Refuges, and Wilderness Areas with the understanding that sufficient protection and balance would be ensured between protected areas and multiple-use managed areas, and that there would be no more administrative land withdrawals. The Alaska lawsuit alleged that USDA violated ANILCA by applying the requirements of the roadless rule to Alaska's national forests. USDA settled the lawsuit by agreeing to publish the proposed rule (located elsewhere in the same part of today's **Federal Register**) to temporarily exempt the Tongass from the application of the roadless rule, and to publish this separate ANPR requesting comment on whether to exempt permanently the Tongass and the Chugach National Forests in Alaska from the application of the roadless rule.

Under the settlement, the vast majority of Alaska National Forests will remain off limits to development. Timber harvest will be prohibited on more than 95 percent of Alaska National Forests as required under existing forest plans. Exempting the Tongass National Forest from the application of the roadless rule would make approximately 300,000 roadless acres available for—forest management—slightly more than 3 percent of the 9.3 million roadless acres in the Tongass, or 0.5 percent of the total roadless acres nationwide. Exempting the Chugach National Forest, from the application of the roadless rule would permit roaded access on approximately 150,000 acres—less than 3 percent of the forest's 5.4 million roadless acres, or 0.3 percent of the total roadless acres nationwide. The proposals under the settlement would preserve all old-growth reserves, riparian buffers, beach fringe buffers, roadless areas, and other protections contained in the forest plans. The roadless rule would also continue to apply to the 43.7 million roadless acres in national forests outside of Alaska.

Public comment is invited and will be considered in the development of the proposed rule.

DATES: Comments must be postmarked by August 14, 2003.

ADDRESSES: Send written comments to: Roadless ANPR, USFS Content Analysis Team, P.O. Box 22777, Salt Lake City, Utah, 84122; by electronic mail to *roadlessanpr@fs.fed.us;* or by facsimile to 801–880–3311. If you intend to submit comments in batched e-mails from the same server, please be aware that electronic security safeguards on Forest Service and Department of Agriculture computer systems intended to prevent commercial spamming may limit batched e-mail access. The Forest Service is interested in receiving all comments on this advance notice of proposed rulemaking, however, so please call (801) 517–1020 to facilitate transfer of comments in batched e-mail messages. Please note that all comments will be available for public inspection and copying. The agency cannot confirm receipt of comments. Individuals wishing to inspect the comments should call Jody Sutton at (801) 517–1023 to facilitate an appointment.

FOR FURTHER INFORMATION CONTACT: In Washington, DC contact: Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA, (202) 205–1019; and in Juneau, Alaska contact: Jan Lerum, Regional Planner, Forest Service, USDA, (907) 586–8796.

SUPPLEMENTARY INFORMATION:

Background

Implementation and Review of Roadless Area Conservation Rule

On May 4, 2001, the Secretary of Agriculture expressed the Administration's commitment to providing protection for roadless areas in the National Forest System. However, acknowledging concerns raised by local communities, tribes, and States impacted by the January 12, 2001, Roadless Area Conservation Rule (66 FR 3244), the Secretary also indicated that USDA would move forward with a responsible and balanced approach to re-examining the rule that fairly addressed those concerns.

On May 10, 2001, two days before the Roadless Area Conservation Rule was to become effective, the U.S. District Court for the District of Idaho issued a preliminary injunction order enjoining the Department from implementing the rule. This decision was appealed, and the Ninth Circuit Court of Appeals reversed and remanded this preliminary injunction order. In total, nine lawsuits challenging the roadless rule have been filed in six judicial districts and four federal circuits.

On June 7, 2001, in order to bring some stability to roadless area management given the legal uncertainties with implementing the rule, Chief Dale Bosworth instituted interim agency direction to protect roadless values in inventoried roadless areas. In view of the the Ninth Circuit's April 14, 2003, order reversing the preliminary injunction and remanding the matter, the agency's interim direction was allowed to expire on June 14, 2003.

First Advance Notice of Proposed Rulemaking

On July 10, 2001, the Forest Service published an advance notice of proposed rulemaking (ANPR) seeking public comment concerning how best to proceed with long-term protection and management of inventoried roadless areas. The first ANPR indicated that

how the Department ultimately addresses protecting roadless values would depend on a number of factors. Those included court decisions, public comments, and practical options for amending the current rule or using other administrative tools to implement inventoried roadless area protections.

During the public comment period for the first ANPR that closed on September 11, 2001, the Forest Service received over 726,000 responses. The responses represented two main points of view on natural resource management and perspectives on resource decisionmaking: (1) Emphasis on environmental protection and preservation, and support for making national decisions; and (2) emphasis on responsible active management, and support for local decisions made through the forest planning process. A 1,200 page summary of this public comment was prepared in May of 2002, and is available on the Forest Service internet site for Roadless Area Conservation at *http://www.roadless.fs.fed.us.*

Relationship of Rulemaking Proposals to Alaska Litigation

In January of 2001, the State of Alaska and six other parties filed a lawsuit against USDA contending that the roadless rule violated various statutes. On June 10, 2003, a settlement agreement was signed by the U.S. Department of Justice, the State of Alaska, and intervenor-plaintiffs to resolve and dismiss this litigation. This settlement agreement calls for the Federal Government to publish in the **Federal Register**, within 60 days: (1) A proposed temporary regulation that would exempt the Tongass National Forest from the application of the roadless rule until completion of the rulemaking process for any permanent amendments to the roadless rule; and (2) an advance notice of proposed rulemaking to exempt both the Tongass and the Chugach National Forests from the application of the roadless rule. This advance notice of proposed rulemaking, and a proposed rule published elsewhere in today's **Federal Register** to exempt the Tongass National Forest from the applicability of the roadless rule, fullfill these terms of the settlement agreement.

A Unique Situation Exists in the State of Alaska

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA). In ANILCA, Congress found that the Act provided the proper balance between the protection of environmental values while providing opportunity for the satisfaction of the economic and social needs of the people in Alaska. The Act set aside millions of acres in Alaska for the National Park Service, Forest Service, National Monuments, National Wildlife Refuges and Wilderness Areas.

If the Tongass and the Chugach National Forests are exempted from the roadless rule, the Forests would continue to be managed pursuant to the existing Forest Plans. Both the 1997 Revised Forest Plan (as readopted by the February 2003 Record of Decision) for the Tongass and the 2002 Revised Forest Plan for the Chugach were developed through fair and open planning processes, based on years of extensive public involvement and thorough scientific review, and provide full consideration of social, economic, and ecological values. The net effect of amending the roadless rule to exclude National Forest System lands in the State of Alaska would be to allow timber harvest in approximately 300,000 additional acres (approximately 3 percent) on the Tongass out of 9.34 million inventoried roadless acres, and possible access and development on 150,000 additional acres out of 5.4 million roadless acres on the Chugach. Timber harvest would be prohibited on approximately 95 percent of National Forest System lands in the State of Alaska under the existing forest plans, if both the Tongass and the Chugach National Forests were excluded from application of the prohibitions of the roadless rule.

Public Comment Solicitation

All interested parties are encouraged to express their views in response to this request for public comment on the following question:

Should any exemption from the applicability of the roadless rule to the Tongass National Forest be made permanent and also apply to the Chugach National Forest?

Regulatory Findings

This second advance notice of proposed rulemaking is being issued to report on public input received and to obtain public comment regarding the protection and management of inventoried roadless areas in the State of Alaska. Because the Department is not proposing any specific action at this time, there are no regulatory findings associated with this notice. Comments received will help the Department determine the extent and scope of any future rulemaking.

Conclusion

The Department of Agriculture is considering a permanent exemption for the Tongass and Chugach National Forests from the applicability of the roadless rule. Public input and comment received through this second advance notice of proposed rulemaking will help inform the Department's consideration of future rulemaking proposals.

Dated: June 30, 2003.

Dale N. Bosworth,

Chief.

[FR Doc. 03–17419 Filed 7–14–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 294

RIN 0596–AC04

Special Areas; Roadless Area Conservation; Applicability to the Tongass National Forest, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The Department of Agriculture, Forest Service is proposing to amend regulations concerning the Roadless Area Conservation Rule (hereinafter, referred to as the roadless rule) to exempt the Tongass National Forest (hereinafter, referred to as the Tongass) from prohibitions against timber harvest, road construction, and reconstruction in inventoried roadless areas until a final rule is promulgated as announced by the Forest Service on July 10, 2001, in an advance notice of proposed rulemaking.

In seeking public comment on this proposal to amend the roadless rule, the agency is fulfilling part of the Department's obligations under the June 10, 2003 settlement agreement for *State of Alaska* v. *USDA,* while maintaining the ecological values of inventoried roadless areas in the Tongass National Forest.

In *State of Alaska* v. *USDA,* the State of Alaska and other plaintiffs alleged that the roadless rule violated a number of federal statutes, including the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). Passed overwhelmingly by Congress in 1980, ANILCA sets aside millions of acres in Alaska for the National Park Service, Forest Service, National Monuments, National Wildlife Refuges, and Wilderness Areas with the

understanding that sufficient protection and balance would be ensured between protected areas and multiple-use managed areas, and that there would be no more administrative land withdrawals. The Alaska lawsuit alleged that USDA violated ANILCA by applying the requirements of the roadless rule to Alaska's national forests. USDA settled the lawsuit by agreeing to publish this proposed rule to temporarily exempt the Tongass from the application of the roadless rule, and to publish the separate advance notice of proposed rulemaking (located elsewhere in the same part of today's **Federal Register**) requesting comment on whether to exempt permanently the Tongass and the Chugach National Forests in Alaska from the application of the roadless rule.

Under the settlement, the vast majority of Alaska National Forests will remain off limits to development. Timber harvest will be prohibited on more than 95 percent of Alaska National Forests as required under existing forest plans. Exempting the Tongass National Forest from the application of the roadless rule would make approximately 300,000 roadless acres available for forest management—slightly more than 3 percent of the 9.3 million roadless acres in the Tongass, or 0.5 percent of the total roadless acres nationwide. Exempting the Chugach National Forest from the application of the roadless rule would permit roaded access on approximately 150,000 acres—less than 3 percent of the forest's 5.4 million roadless acres, or 0.3 percent of the total roadless acres nationwide. The proposals under the settlement would preserve all old-growth reserves, riparian buffers, beach fringe buffers, roadless areas, and other protections contained in the forest plans. The roadless rule would also continue to apply to the 43.7 million roadless acres in national forests outside of Alaska.

Public comment is invited and will be considered in the development of the final rule.

DATES: Comments must be postmarked by August 14, 2003.

ADDRESSES: Send written comments to: Roadless TNF, Content Analysis Team, USDA Forest Service, P.O. Box 22810, Salt Lake City, UT 84122; by electronic mail to *roadlesstnf@fs.fed.us;* or by facsimile to (801) 880–2808. If you intend to submit comments in batched e-mails from the same server, please be aware that electronic security safeguards on Forest Service and Department of Agriculture computer systems intended to prevent commercial spamming may limit batched e-mail access. The Forest Service is interested in receiving all comments on this proposed rule, however, so please call (801) 517–1020 to facilitate transfer of comments in batched e-mail messages. Please note that all comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The agency cannot confirm receipt of comments. Individuals wishing to inspect the comments should call Jody Sutton at (801) 517–1023 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: In Washington, DC contact: Dave Barone, Planning Specialist, Ecosystem Management Coordination Staff, Forest Service, USDA, (202) 205–1019; and in Juneau, Alaska contact: Jan Lerum, Regional Planner, Forest Service, USDA, (907) 586–8796.

SUPPLEMENTARY INFORMATION:

Background and Litigation History

On January 12, 2001, the Department published a final rule entitled ''Special Areas; Roadless Area Conservation'' (66 FR 3244) (''the roadless rule''). The roadless rule was a discretionary rule that fundamentally changed the Forest Service's longstanding approach to management of inventoried roadless areas by establishing nationwide prohibitions generally limiting, with some exceptions, timber harvest, road construction, and reconstruction within inventoried roadless areas in national forests. A draft environmental impact statement (DEIS) (May 2000) and final environmental impact statement (FEIS) (November 2000) were prepared and included consideration of alternatives that specifically exempted the Tongass National Forest from the roadless rule's prohibitions. As described in the FEIS, the roadless rule was predicted to cause substantial social and economic hardship in communities throughout Southeast Alaska (FEIS Vol. 1, 3–202, 3–326 to 3–350, 3–371 to 3–392). Nonetheless, the final rule extended the rule's prohibitions to the Tongass National Forest.

The roadless rule has been subject to a number of lawsuits in Federal district courts in Idaho, Utah, North Dakota, Wyoming, Alaska, and the District of Columbia. In one of these lawsuits, the District Court of Idaho issued a nation-wide preliminary injunction prohibiting implementation of the roadless rule. The preliminary injunction decision was reversed and remanded by a panel of the Ninth Circuit Court of Appeals. The Ninth Circuit held that the Forest Service's preparation of the environmental impact statement for the roadless rule was in conformance with the general statutory requirements of the National Environmental Policy Act.

In another lawsuit, the State of Alaska and six other parties alleged that the roadless rule violated the Administrative Procedure Act, National Forest Management Act, National Environmental Policy Act, Alaska National Interest Lands Conservation Act, Tongass Timber Reform Act and other laws. In the June 10, 2003, settlement of that lawsuit, the Department committed to publishing a proposed rule with request for comment that would exempt the Tongass National Forest from application of the roadless rule. The Department made no representations regarding the content or substance of any final rule that may result.

If the Tongass National Forest is exempted from the prohibitions in the roadless rule, the Forest would continue to be managed pursuant to the 1997 Tongass Forest Plan with non-significant amendments, as readopted in the February 2003 Record of Decision (2003 Plan) issued in response to the district court's remand of the 1997 Plan in *Sierra Club* v. *Rey,* (D. Alaska). Both documents were developed through fair and open planning processes, based on years of extensive public involvement and thorough scientific review. The 2003 Tongass Forest Plan provides a full consideration of social, economic, and ecological values in Southeast Alaska. This rulemaking does not propose to reduce any of the old-growth reserves, riparian buffers, beach fringe buffers, or other standards and guidelines of the 2003 Tongass Forest Plan or, in any way, impact the protections afforded by the plan.

Congress Has Given Specific Direction To Protect the National Interest in Alaska Public Lands

Congress has provided specific direction to protect the national interest in the public lands in Alaska. The Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (16 U.S.C. 3210) established vast areas of conservation system units, including more than 50 percent of the combined acreage of all designated wilderness areas in the Nation. Congress further found that the Act provides sufficient protection for the national interest in the scenic, natural, cultural, and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people.

In 1990, Congress provided additional management direction to reflect national interests in Alaska by passing the Tongass Timber Reform Act. The Tongass Timber Reform Act amended ANILCA by directing the Secretary of Agriculture, subject to certain limitations, to seek to provide a supply of timber from the Tongass National Forest which (1) meets the annual market demand for timber and (2) meets the market demand for timber for each planning cycle.

The Department will consider whether the proposed rule better implements the national interests proclaimed by Congress for the Tongass National Forest.

Most Southeast Alaska Communities Are Significantly Impacted by the Roadless Rule

There are thirty two communities within the boundary of the Tongass National Forest. Most Southeast Alaska communities lack road and utility connections to other communities and to the mainland systems. Because most Southeast Alaska communities are surrounded on land by inventoried roadless areas of the Tongass National Forest, the roadless rule significantly limits the ability of communities to develop road and utility connections that almost all other communities in the United States take for granted. If the proposed rule is adopted, communities in Southeast Alaska would be able to propose road and utility connections across national forest system land that will benefit their communities. Any such community proposal would then be evaluated on its own merits.

In addition, the preponderance of federal land in Southeast Alaska results in communities being more dependent upon Tongass National Forest lands and having fewer alternative lands to generate jobs and economic activity. The communities of Southeast Alaska are particularly affected by the roadless rule prohibitions. The FEIS estimated that approximately 900 jobs could be lost in Southeast Alaska due to the application of the roadless rule.

Roadless Areas Are Common, Not Rare, on the Tongass National Forest

The 16.8 million acre Tongass National Forest in Southeast Alaska is approximately 90 percent roadless and undeveloped. The vast majority of the 9.34 million acres of inventoried roadless areas and their associated values in the Tongass are already either protected through Congressional designation or through the Tongass Forest Plan.

Congress has designated 39 percent of the Tongass as Wilderness, National Monument, or other special designations which prohibit commercial timber harvest and road construction, with certain limited exceptions. An additional 39 percent of the Tongass is managed under the Forest Plan to maintain natural settings where commercial timber harvest and road construction are not allowed. About 4 percent of the Tongass is designated suitable for commercial timber harvest, with about half of that area contained within inventoried roadless areas. The remaining 18 percent of the Forest is managed for various multiple uses. The Tongass Forest Plan provides high levels of resource protection, and has been designed to assure ecological sustainability over time while allowing some development to occur that supports communities dependent on the management of National Forest System lands in Southeast Alaska.

In addition, the State of Alaska as a whole has an extensive network of protected areas. Alaska has the greatest amount of land and the highest percentage of its land base in conservation reserves of any state. Federal lands comprise 59 percent of the state and 40 percent of federal lands in Alaska are in conservation system units.

Different Approaches Considered for the Tongass National Forest

The unique situation of the Tongass National Forest has been recognized throughout the Forest Service's process for examining prohibitions in inventoried roadless areas. The process for developing the roadless rule included different options for the Tongass in each stage of the promulgation of the rule and each stage of the environmental impact statement.

In February 1999, the agency exempted the Tongass and other forests with recently revised forest plans from an interim rule prohibiting new road construction. The October 1999 Notice of Intent to prepare an environmental impact statement for the roadless rule specifically requested comment on whether or not the rule should apply to the Tongass National Forest in light of the recent revision of the Tongass Forest Plan and the ongoing economic transition of communities and the timber program in Southeast Alaska. The May 2000 DEIS for the roadless rule proposed to postpone making a decision for the Tongass until April 2004, in association with the 5-year review of the Tongass Forest Plan.

The preferred alternative was altered in the November 2000 FEIS to include prohibitions on timber harvest, as well as road construction and reconstruction on the Tongass, effective April 2004. The FEIS recognized that the economic and social impacts of including the Tongass in the roadless rule's prohibitions could be of considerable consequence in communities where the forest products industry is a significant component of local economies. The FEIS also noted that if the Tongass was exempt from the roadless rule prohibitions, loss of habitat and species abundance would not pose an unacceptable risk to diversity across the forest.

The final January 12, 2001 roadless rule directed an immediate prohibition on timber harvest, road construction, and reconstruction in roadless areas, except for projects that already had a notice of availability of a draft environmental impact statement published in the **Federal Register**.

Litigation Settlement

In January 2001, the State of Alaska filed a lawsuit against the United States Department of Agriculture contending the roadless rule violated the Administrative Procedure Act, National Forest Management Act, National Environmental Policy Act, Alaska National Interest Lands Conservation Act, Tongass Timber Reform Act and other laws.

In fulfillment of one of its obligations under the settlement agreement for *State of Alaska* v. *USDA,* and after consideration of the circumstances surrounding the development and promulgation of the roadless rule relative to the Tongass and the implications of implementing the rule, the Department is seeking public comment on this proposal to amend the roadless rule. This proposed rule has been developed in light of the factors and issues described in this preamble, including serious concerns about the previously disclosed economic and social hardships the application of the rule's prohibitions would cause in communities throughout Southeast Alaska.

Conclusion

For the reasons identified in this preamble, the Department is proposing to amend paragraph (d) of § 294.14 of the Roadless Area Conservation Rule to exempt the Tongass National Forest from prohibitions against timber harvest, road construction, and reconstruction in inventoried roadless areas until the Department promulgates a revised final roadless area conservation rule as announced in the

July 10, 2001, advance notice of proposed rulemaking (66 FR 35918).

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866, Regulatory Planning and Review, and designated as significant by the Office of Management and Budget (OMB). OMB has reviewed this proposed rule since it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

A cost-benefit analysis has been conducted on the impact of this proposed rule and incorporates by reference the detailed regulatory impact analysis prepared for the January 12, 2001, roadless rule, which included the Tongass Exempt Alternative. Much of this analysis was discussed and disclosed in the FEIS for the roadless rule. A review of the data and information from the original analysis and the information disclosed in the FEIS found that it is still relevant, pertinent, and sufficient in regards to exempting the Tongass from the application of the roadless rule. The Department has concluded that no new information exists today that would significantly alter the results of the original analysis.

Moreover, this proposed rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial and final regulatory flexibility analysis was conducted on the proposed and final roadless area conservation rule, which included the effects associated with the Tongass National Forest. An initial small entities flexibility assessment for this proposed rule has been made and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This proposed rule will not impose record keeping requirements; will not affect small entities' competitive position in relation to large entities; and will not affect small entities' cash flow, liquidity, or ability to remain in the market.

Environmental Impact

The Department prepared a Draft EIS (May 2000) and Final EIS (November 2000) in association with promulgation of the roadless area conservation rule. The DEIS and FEIS examined in detail sets of Tongass-specific alternatives. In the DEIS the Department proposed the Tongass Deferred Alternative, which would not have applied the rule's prohibitions to the Tongass National Forest but would have required that the agency make a determination as part of the five-year plan review whether to prohibit road construction in unroaded portions of inventoried roadless areas, and would have directed that an evaluation of whether and how to protect roadless characteristics, in the context of multiple use management, be conducted during the next Tongass Forest Plan revision. In the FEIS, the Department identified the Tongass ''Not Exempt'' as the Preferred Alternative, which would have treated the Tongass National Forest the same as all other national forests, but delayed implementation of the rule's prohibitions untilApril 2004. This delay would have served as a social and economic mitigation measure by providing a transition period for communities most affected by changes in management of inventoried roadless areas in the Tongass. In the final rule published on January 12, 2001, however, the Department selected the Tongass ''Not Exempt'' alternative which immediately applied the rule's prohibitions to inventoried roadless areas on the Tongass, but allowed road construction, reconstruction, and the cutting, sale, and removal of timber from inventoried roadless areas where a notice of availability for a draft environmental impact statement for such activities was published in the **Federal Register** prior to January 12, 2001.

In February 2003, in compliance with the district court's order in *Sierra Club* v. *Rey* (D. Alaska), the Forest Service issued a Record of Decision (ROD) and a Supplemental Environmental Impact Statement (SEIS) to the 1997 Revised Tongass Forest Plan that examined the site-specific wilderness and non-wilderness values of the inventoried roadless areas on the Forest as part of the forest planning process. The February 2003 ROD readopted the 1997 Tongass Forest Plan with non-significant amendments as the current forest plan. Congress has prohibited administrative or judicial review of the February 2003 ROD. Section 335 of the 2003 Omnibus Appropriations Act provides that the ROD for the 2003 SEIS for the 1997 Tongass Land Management Plan shall not be reviewed under any Forest Service administrative appeal process, and its adequacy shall not be subject to judicial review by any court in the United States.

Because the 2000 FEIS for the final roadless area conservation rule considered exempting the Tongass National Forest as a detailed alternative, the decision to issue this proposed amendment is expected to be based on the FEIS, unless the Department finds that there are significant new circumstances or information relevant to environmental concerns and bearing on this alternative or its impacts that would warrant additional environmental impact analysis. A final determination will be made before adoption of the final rule. The FEIS is available in the document archives section of the Roadless Area Conservation internet site at *http://www.roadless.fs.fed.us.*

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12360, and it has been determined that the proposed rule will not pose the risk of a taking of a Constitutionally-protected private property, as the rule is limited to exempting temporarily the applicability of the roadless area conservation rule to the Tongass National Forest.

Energy Effects

This proposed rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Department has not identified any State or local laws or regulations that are in conflict with this action or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict was to be identified, the proposed rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this proposed rule; and (2) the Department would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this proposed rule on State, local and tribal governments and the private sector. This proposed rule does not

compel the expenditure of $100 million or more by any State, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Department has considered this proposed rule under the requirements of Executive Order 13132, Federalism. The agency has made a preliminary assessment that the rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this proposed rule, the Department will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Moreover, this proposed rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. However, Forest Service line officers in the field have been asked to make contact with Tribes to ensure awareness of this proposed rule and conduct government-to-government dialog.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any record keeping, reporting requirements, or other information collection requirements as defined in 5 CFR part 1320, and therefore imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Government Paperwork Elimination Act Compliance

The Forest Service is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 36 CFR Part 294

National Forests, Navigation (air), Recreation and recreation areas, Wilderness areas.

Therefore, for the reasons set forth in the preamble, the Department of Agriculture proposes to amend part 294 of title 36 of the Code of Federal Regulations as follows:

PART 294—SPECIAL AREAS

Subpart B—Protection of Inventoried Roadless Areas

1. The authority citation for subpart B continues to read as follows:

Authority: 16 U.S.C. 472, 529, 551, 1608, 1613; 23 U.S.C. 201, 205.

2. Revise paragraph (d) of § 294.14 to read as follows:

§ 294.14 Scope and applicability.

* * * * *

(d) Until the USDA promulgates a revised final roadless area conservation rule [to which the agency originally sought public comments in the July 10, 2001, advance notice of proposed rulemaking (66 FR 35918)], this subpart does not apply to road construction, reconstruction, or the cutting, sale, or removal of timber in inventoried roadless areas in the Tongass National Forest.

* * * * *

Dated: July 2, 2003.

Joel D. Holtrop,

Acting Chief.

[FR Doc. 03–17420 Filed 7–14–03; 8:45 am]

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Federal Register

Tuesday,
July 15, 2003

Part III

Federal Trade Commission

16 CFR Part 460

Labeling and Advertising of Home Insulation: Trade Regulation Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 460

Labeling and Advertising of Home Insulation: Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''Commission'' or ''we'') proposes to amend its Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (''R-value Rule'' or ''Rule'') to streamline and increase the benefits of the Rule to consumers and sellers, minimize its costs, and respond to the development and utilization of new technologies to make American homes more energy efficient and less costly to heat and cool. This document provides background on the R-value Rule and this proceeding; proposes amendments to recognize technological advances in R-value testing and specimen preparation procedures, and to clarify, streamline, and improve the Rule's requirements; and discusses public comments received by the Commission and solicits further comments on the proposed amendments and additional issues.

DATES: Written comments must be submitted on or before September 22, 2003. Because written comments appear adequate to present the views of all interested parties, neither a public workshop nor a hearing has been scheduled. If interested parties request the opportunity to present views orally, the Commission will publish a document in the **Federal Register**, stating the time and place at which the hearing or workshop will be held and describing the procedures that will be followed. In addition to submitting a request to present views orally, interested parties who wish to appear must submit, on or before September 22, 2003, a written comment or statement that describes the issues on which the party wishes to speak. If there is no interest in a hearing or workshop, the Commission will base its decision on the written rulemaking record.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. All written comments should be captioned ''16 CFR Part 460—Labeling and Advertising of Home Insulation'' and ''16 CFR Part 460 Request to Testify—Labeling and Advertising of Home Insulation,'' respectively. As discussed in the Dates section of this document, a public workshop has not been scheduled. However, individuals who would like to submit oral views should submit their request to the address noted in this section. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form. Comments or requests in electronic form should be sent, if possible, to: *r-valuerule@ftc.gov*. The Commission will make this document and, to the extent possible, all comments received in electronic form in response to this document, available to the public through the Internet at the following address: *www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

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I. Introduction

The R-value Rule specifies substantiation and disclosure requirements for thermal insulation products used in the residential market, and prohibits certain claims unless they are true.[1] The primary disclosure required is the insulation product's ''R-value.'' R-value is the recognized numerical measure of the ability of an insulation product to restrict the flow of heat and, therefore, to reduce energy costs—the higher the R-value, the better the product's insulating ability. To assist consumers, the Rule requires sellers (including insulation manufacturers, professional installers, new home sellers, and retailers) to disclose the insulation product's R-value and related information, before retail sale, based on uniform, industry-adopted standards.[2] This information

[1] The Commission promulgated the R-value Rule on August 29, 1979 under section 18 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 57a. The Rule became effective on September 30, 1980. *See* Final Trade Regulation Rule (''Statement of Basis and Purpose'' or ''SBP''), 44 FR 50218 (1979).

[2] Home insulation sellers should be aware that additional Commission rules or guides may also apply to them. For example, the Commission's Rules concerning Disclosure of Written Consumer Product Warranty Terms and Conditions, and the Pre-sale Availability of Written Warranty Terms, 16 CFR Parts 701 and 702, specify requirements

enables consumers to evaluate how well a particular insulation product is likely to perform, to determine whether the cost of the insulation is justified, and to make meaningful, cost-benefit based purchasing decisions among competing products.

II. Overview of the Rule

A. Products Covered

The R-value Rule covers all ''home insulation products.'' Under the Rule, ''insulation'' is any product mainly used to slow down the flow of heat from a warmer area to a cooler area, for example, from the heated inside of a house to the outside during the winter through exterior walls, attic, floors over crawl spaces, or basement. ''Home insulation'' includes insulation used in all types of residential structures. The Rule automatically covers new types or forms of insulation marketed for use in the residential market, whether or not the Rule specifically refers to them. The Rule does not cover pipe insulation, or any type of duct insulation except for duct wrap. The Rule does not cover insulation products sold for use in commercial (including industrial) buildings. It does not apply to other products with insulating characteristics, such as storm windows or storm doors.

Home insulation includes two basic categories: ''mass'' insulations and ''reflective'' insulations. Mass insulations reduce heat transfer by conduction (through the insulation's mass), convection (by air movement within and through the air spaces inside the insulation's mass), and radiation. Reflective insulations (primarily aluminum foil) reduce heat transfer when installed facing an airspace by increasing the thermal resistance of the airspace by reducing heat transfer by radiation through it. Within these basic categories, home insulation is sold in various types (''type'' refers to the material from which the insulation is made, *e.g.*, fiberglass, cellulose, polyurethane, aluminum foil) and forms (''form'' refers to the physical form of the product, *e.g.*, batt, dry-applied loose-fill, spray-applied, boardstock, multi-sheet reflective).

B. Parties Covered

The Rule applies to home insulation manufacturers, professional installers, retailers who sell insulation to consumers for do-it-yourself installation, and new home sellers (including sellers of manufactured housing). It also applies to testing laboratories that conduct R-value tests for home insulation manufacturers or other sellers who use the test results as the basis for making R-value claims about home insulation products.

C. Basis for the Rule

The Commission issued the R-value Rule to prohibit, on an industry-wide basis, specific unfair or deceptive acts or practices. When it issued the Rule, the Commission found that the following acts or practices were prevalent in the home insulation industry and were deceptive or unfair, in violation of section 5 of the FTC Act, 15 U.S.C. 45: (1) sellers had failed to disclose R-value, and caused substantial consumer injury by impeding the ability of consumers to make informed purchasing decisions; (2) the failure to disclose R-values, which varied significantly among competing home insulation products of the same thickness and price, misled consumers when they bought insulation on the basis of price or thickness alone, (3) sellers had exaggerated R-values, often failing to take into account factors (*e.g.*, aging, settling) known to reduce thermal performance; (4) sellers had failed to inform consumers about the meaning and importance of R-value; (5) sellers had exaggerated the amount of savings on fuel bills that consumers could expect, and often failed to disclose that savings will vary depending on the consumer's particular circumstances; and (6) sellers had falsely claimed that consumers would qualify for tax credits through the purchase of home insulation, or that products had been ''certified'' or ''favored'' by federal agencies. 44 FR at 50222–24.

D. Requirements of the Rule

The Rule requires that manufacturers and others who sell home insulation determine and disclose each product's R-value and related information (*e.g.*, thickness, coverage area per package) on package labels and manufacturers' fact sheets. R-value ratings vary among different types and forms of home insulations and among products of the same type and form. The Rule requires that R-value claims to consumers about specific home insulation products be based on uniform R-value test procedures that measure thermal performance under ''steady-state'' (*i.e.*, static) conditions.[3] Mass insulation products may be tested under any of the test methods. The tests on mass insulation products must be conducted on the insulation material alone (excluding any airspace). Reflective insulation products must be tested according to either ASTM C 236–89 (1993) or ASTM C 976–90, which can determine the R-values of insulation systems (such as those that include one or more air spaces).[4] The tests must be conducted at a mean temperature of 75° F.

When it promulgated the Rule, the Commission found that certain factors, such as aging or settling, affect the thermal performance of home insulation products. 44 FR at 50219–20, 50227–28. To ensure that R-value claims take these factors into account, the Rule mandates that the required R-value tests for polyurethane, polyisocyanurate, and extruded polystyrene insulation products be conducted on test specimens that fully reflect the effect of aging, and for loose-fill insulation products on test specimens that fully reflect the effect of settling.

Specific disclosures must be made: (1) by manufacturers on product labels and manufacturers' fact sheets; (2) by professional installers and new home sellers on receipts or contracts; and (3) by manufacturers, professional

concerning warranties; the Commission's Guides for the Use of Environmental Marketing Claims, 16 CFR Part 260, address the application of section 5 of the FTC Act, 15 U.S.C. 45, to environmental advertising and marketing claims (*e.g.*, claims concerning the amount of recycled material a product contains). Further, section 5 of the FTC Act declares that unfair or deceptive acts or practices are unlawful, and requires that advertisers and other sellers have a reasonable basis for advertising and other promotional claims before they are disseminated. *See Deception Policy Statement*, Letter from the Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983), *reprinted in Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984); *Statement of Policy on the Scope of the Consumer Unfairness Jurisdiction*, Letter from the Commission to the Honorable Wendell H. Ford, Chairman, Consumer Subcommittee, Committee on Commerce, Science, and Transportation, U.S. House of Representatives, and the Honorable John C. Danforth, Ranking Minority Member, Consumer Subcommittee, Committee on Commerce, Science and Transportation, U.S. Senate (Dec. 17, 1980), *reprinted in International Harvester Co.*, 104 F.T.C. 949 (1984); and *Policy Statement Regarding Advertising Substantiation*, 49 FR 30999 (1984), *reprinted in Thompson Medical Co.*, 104 F.T.C. 839 (1984).

[3] Section 460.5 of the Rule requires that the R-values of home insulation products be based on one of the test procedures specified in the Rule. Most of the test procedures in the Rule specify American Society for Testing and Materials (ASTM) standards. ASTM reviews and revises each of these procedures periodically. Under section 460.7 of the Rule, the Commission will accept, but not require, the use of a revised version of any of these standards 90 days after ASTM adopts and publishes the revision. The Commission may, however, reopen the rulemaking proceeding during the 90–day period or at any later time to consider whether it should require use of the revised procedure or reject it under section 460.5 of the Rule. 61 FR at 13663.

[4] The R-value of a single-sheet reflective insulation product must be tested under ASTM E408 or another test method that provides comparable results.

installers, and retailers in advertising and other promotional materials (including those on the Internet) that contain an R-value, price, thickness, or energy-saving claim, or compare one type of insulation to another. Manufacturers and other sellers must have a ''reasonable basis'' for any energy-saving claims they make.[5]

III. Procedural History

A. The 1995 Initial Regulatory Review (''the 1995 Notice'')

On April 6, 1995, as part of its ongoing regulatory review program, the Commission solicited public comments about the economic impact of and current need for the R-value Rule.[6] 60 FR 17492 (1995). At the same time, the Commission solicited comments on a petition (''Petition'') from Ronald S. Graves, who at that time was a Research Staff Member, Materials Analysis Group, Martin Marietta Energy Systems, Inc. (which operated Oak Ridge National Laboratory (''ORNL'') for the U.S. Department of Energy (''DOE'')). The Petition requested that the Commission approve an additional (fifth) ASTM R-value test procedure as an optional test procedure for determining the R-value of home insulation under the Rule.

B. The 1996 Notice of Continuing Need and Technical Amendments (''the 1996 Notice'')

Based on the comments in response to the 1995 Notice, the Commission determined that there was a continuing need for the Rule, published its determination to retain it, and adopted several technical, non-substantive amendments to support the use of the most current testing procedures available and to streamline the Rule.[7] 61 FR 13659, at 13659–62, 13665 (March 28, 1996).

C. The 1999 Advance Notice of Proposed Rulemaking (''the ANPR'')

In 1999, based on the comments received in response to the 1995 Notice (that were not otherwise addressed in the 1996 notice), the Commission published an Advance Notice of Proposed Rulemaking (64 FR 48024 (Sept. 1, 1999)). In the ANPR, the Commission proposed limited amendments that were designed to: clarify the Rule; make disclosure requirements consistent for competing types of loose-fill insulation products; require the most current procedures for preparing R-value test specimens and conducting R-value tests; delete disclosures for a type of insulation that no longer is sold; and reduce disclosure requirements for retailers. Regarding those issues, the Commission believed that there was sufficient information to propose amendments. The Commission also requested comments on whether to revise the Rule to: cover additional products; require the disclosure of in-use performance values (as opposed to laboratory tests that are conducted under static, uniform conditions); require the disclosure of the performance of building systems; adopt additional test specimen preparation requirements for specific types and forms of insulation products to account for various factors that affect R-values; adopt additional or updated testing requirements; and change the disclosure requirements for manufacturers' labels and fact sheets, advertisements and other promotional materials, and for professional installers, new home sellers, and retailers. The comments filed in response to the ANPR are discussed in depth at section V of this document following the brief section-by-section description of the proposed amendments.

IV. Section-by-Section Description of Proposed Amendments

The following is a brief summary of the amendments the Commission is proposing for the R-value Rule in response to the comments received. These proposed changes are addressed in more detail in section V of this document. Section V also contains a detailed discussion of other issues raised in the 1999 ANPR that are not the subject of a proposed amendment.

Section 460.1 (What This regulation does)

The Commission proposes to amend the monetary penalty reference from $10,000 to $11,000 to reflect the current requirements of section 1.98 of the Commission's regulations. This is a technical, conforming change.

Section 460.5(a) (R-value Tests)

Temperature Differential: The Commission proposes to amend section 460.5, R-value Tests, to specify that tests conducted under section 460.5(a) must be done with a temperature differential of 50° F plus or minus 10° F in addition to the mean temperature requirement currently in the Rule [*see* section V.D.2.b. of this document].

Update Test Procedure: The Commission proposes to update the reference for ASTM C 739–91 to reflect the most recent version of the procedure (ASTM C 739–97). The reference to ASTM C 236–89 and ASTM C 976–90 would be eliminated and replaced with ASTM C 1363–97, ''Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus'' [*see* section V.F. of this document].

Section 460.5(a)(1) (R-value Tests)

Aging of Cellular Plastics: Section 460.5(a)(1) would also be amended under the proposal to require the use of several recent ASTM test procedures to take into account the effects of aging on cellular plastics insulation. These test procedures include ASTM C 578–95, ''Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation,'' ASTM C 1029–96, ''Standard Specification for Spray-Applied Rigid Cellular Polyurethane Thermal Insulation,'' and ASTM C 591–94, ''Standard Specification for Unfaced Preformed Rigid Cellular Polyisocyanurate Thermal Insulation'' [*see* section V.C.1.a. of this document]

Section 460.5(a)(3) (R-value Tests)

Loose-Fill Settling: The Commission proposes to amend section 460.5(a)(3) to eliminate the reference to the GSA specifications for measuring the settling

[5] Although the Rule does not specify how energy saving claims must be substantiated, the Commission explained that scientifically reliable measurements of fuel use in actual houses or reliable computer models or methods of heat flow calculations would meet the reasonable basis standard. 44 FR at 50233–34. Sellers other than manufacturers can rely on the manufacturer's claims unless they know or should know that the manufacturer does not have a reasonable basis for the claims.

[6] The Commission previously reviewed the Rule in 1985 under the Regulatory Flexibility Act, 5 U.S.C. 610, to determine the economic impact of the Rule on small entities. Based on that review, the Commission determined that: there was a continuing need for the Rule; there was no basis to conclude that the Rule had a significant impact on a substantial number of small entities; there was no basis to conclude that the Rule should be amended to minimize its economic impact on small entities; the Rule did not generally overlap, duplicate, or conflict with other regulations; and technological, economic, and other changes had not affected the Rule in any way that would warrant amending the Rule. 50 FR 13246 (1985).

[7] These amendments: (1) revised section 460.5 of the Rule to allow the use of an additional ASTM test procedure as an optional, but not required, test procedure to determine the R-value of home insulation; (2) revised section 460.5 to require the use of current, updated versions of other ASTM R-value test methods cited in the Rule; (3) added an Appendix summarizing the exemptions from specific requirements of the Rule that the Commission previously granted for certain classes of persons covered by the Rule; and (4) revised section 460.10 of the Rule to cross-reference the Commission's enforcement policy statement for foreign language advertising in 16 CFR 14.9 and deleted the previous Appendix to the Rule because it merely repeated the text of 16 CFR 14.9.

of loose fill insulation and insert language indicating that industry members must take into account the effects of settling on the product's R-value for spray-applied cellulose and stabilized cellulose [see section V.C.2. of this document].

Section 460.5(a)(4) (R-value Tests)

Test for Spray-Applied Cellulose Insulation: The Commission proposes to add a new paragraph, section 460.5(a)(4), which would require that tests for self-supported spray-applied cellulose be conducted at the settled density determined pursuant to ASTM C 1149–97 (''Self-supported Spray Applied Cellulosic Thermal Insulation'') [*see* section V.C.2. of this document].

Section 460.5(a)(5) (R-value Tests)

Loose-Fill Initial Installed Thickness: For loose-fill insulations, the proposed amendment would require that manufacturers determine initial installed thickness for their product pursuant to ASTM C 1374, ''Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation,'' for R-values of 11, 13, 19, 22, 24, 32, and 40 and any other R-values provided on the product's label pursuant to § 460.12 [*see* section V.E.1.c.ii. of this document].

Section 460.5(b) and Section 460.5(c) (R-value Tests)

These sections applicable to aluminum foil systems would be reorganized and amended as follows:

Tests for Single Sheet Aluminum Foil Systems: Section 460.5(c) would be redesignated as Section 460.5(b) and would be amended to require that single sheet systems of aluminum foil be tested under ASTM C 1371–98 [*see* section V.D.5.a. of this document].

Test for Multiple Sheet Aluminum Foil Systems: Section 460.5(b) would be moved to Section 460.5(c) and would be amended to indicate that aluminum foil systems with more than one sheet, and single sheet systems of aluminum foil that are intended for applications that do not meet the conditions specified in the tables in the most recent edition of the ASHRAE Handbook, must be tested with ASTM C 1363–97, ''Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus,'' in a test panel constructed according to ASTM C 1224–99, ''Standard Specification for Reflective Insulation for Building Applications,'' and under the test conditions specified in ASTM C 1224–99. To get the R-value from the results of those tests, use the formula specified in ASTM C 1224–99. The tests must be done at a mean temperature of 75° F, with a temperature differential of 30° F. This amendment would eliminate the references to ASTM C 236–89 and ASTM C 976–90 that are currently applicable to these products [*see* section V.D.5.a. of this document].

Section 460.5(d) (R-value Tests)

Insulation Material With Foil Facings and Air Space: Section 460.5(d)(1) would be amended to eliminate reference to ASTM C 236–89 and ASTM C 976–90 and replace them with ASTM C 1363–97, ''Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus'' [*see* section V.D.5.a. of this document].

Section 460.5(e) (R-value Tests)

Incorporation by Reference: A new paragraph (e) would be added to consolidate information regarding incorporation by reference approvals provided by the Office of the **Federal Register** [*see* section V.E. of this document].

Section 460.8

R-Value Tolerances for Manufacturers: The Rule's tolerance provision would be amended to clarify that, if you are a manufacturer of home insulation, the mean R-value of sampled specimens of a production lot of insulation you sell must meet or exceed the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation. The Rule also would prohibit an individual specimen of that insulation from having an R-value more than 10% below the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation [*see* section V.D.3. of this document].

Section 460.12 (Labels)

Labels for Batts and Blankets: The Commission proposes to amend the paragraph at § 460.12(b)(1) to indicate the requirement applies to batts and blankets of any type, not just to those made of mineral fiber [*see* section V.E.1.b. of this document].

Loose-Fill Labels: The Commission also proposes to amend section 460.12 to eliminate certain information requirements on charts for loose-fill cellulose insulation. The proposed amendment would instead require charts for all forms of loose-fill insulation to show the minimum thickness, maximum net coverage area, number of bags per 1,000 square feet, and minimum weight per square foot at R-values of 11, 13, 19, 22, 24, 32, and 40. The amendment also would require the labels for loose-fill insulation to display initial installed thickness information determined pursuant to ASTM C 1374, ''Standard Test Method for Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation'' and the blowing machine specifications that installers must use for loose-fill products [*see* section V.E.1.c. of this document].

Section 460.13 (Fact Sheets)

Urea-based Foam Insulation: The Commission proposes to eliminate the requirements in paragraph (d) of this section related to urea-based foam insulation [*see* section V.E.1.d. of this document].

Section 460.14 (How retailers must handle fact sheets)

Retailers Responsibilities for Fact Sheets: The Commission proposes to amend this section to exempt retailers from making fact sheets available to customers, if they display insulation packages (containing the same information required in fact sheets) on the sales floor where insulation customers are likely to notice them [*see* section V.E.4. of this document].

Section 460.18 (Insulation ads) and 460.19 (Savings Claims)

Affirmative Disclosures for Radio Ads: The Commission proposes to eliminate the affirmative disclosure requirements for radio ads in sections 460.18 and 460.19 [*see* section V.E.2.b. of this document].

Advertising for Urea-based Foam Insulation: The Commission proposes to amend this section to eliminate paragraph (e) in section 460.18, which addresses urea-based foam insulation [*see* section V.E.1.d. of this document].

Section 460.23(a) (Other Laws, rules, and orders)

The Commission plans to amend paragraph (a) to correct a typographical error.

V. Discussion of Comments and Proposed Amendments

The Commission received 21 comments in response to the ANPR.[8]

[8] Adrian D. Troutman, Jr. for TFoil Enterprises (''TFoil''), (Comment #1); Adrian D. Troutman, Jr. for A&J Insulation Construction (''A&J''), (2); The Polyisocyanurate Insulation Manufacturers Association (''PIMA''), (3); The Cellulose Insulation Manufacturers Association (''CIMA''), (4); The Insulation Contractors Association of America (''ICAA''), (5); The Expanded Polystyrene Molders Association (''EPSMA''), (6); Celotex Corporation (''Celotex''), (7); The Foamed Polystyrene Alliance (''FPSA''), (8); The North American Insulation Manufacturers Association (''NAIMA'') (9); Elastizell Corporation of America (''Elastizell''), (10); Uniwood/Fome-Cor Business Unit of

Continued

Most of these came from industry members, trade associations or consultants, with three comments from federal governmental agencies (one from the Department of Energy and two from its contractor, Oak Ridge National Laboratory).

A. Disclosing Thermal Performance of Additional Products

1. Residential Pipe and Duct Insulations

Background

In the ANPR, the Commission asked whether it should amend the Rule to cover residential pipe and duct insulations. Currently, the Rule does not cover these types of insulations, but does cover duct wrap. *See* section 460.2. The Commission stated that unless interested parties have information that sellers are misrepresenting the thermal performance of these products to consumers, it would not propose extending the Rule to cover them.

Comments

DOE stated that flexible duct, which includes an integral insulation jacket and does not require a separate duct wrap, has become much more common in residential applications since the Rule's inception. DOE maintained that this type of duct is often marked with an ''Average R-value'' rating, although, according to DOE, the basis for this rating is unclear. DOE also pointed out that the Council of American Building Officials (''CABO'') Model Energy Code (''MEC'') and many state codes require an R-value rating for duct insulation. DOE concluded that, although there may be no evidence that the R-value of duct insulation is being misrepresented, consumers and inspectors nevertheless need these R-values to be stated in a uniform manner. DOE acknowledged that it is unclear how the R-value on duct insulation (duct wrap *or* flex duct) should actually be reported to the consumer.[9]

NAIMA supported revising the Rule to cover the newer forms of duct insulation that are now sold to consumers in retail stores and building supply outlets. It contended that duct insulations—rigid air ducts, flexible air ducts, and radiant ''bubble packs''—are promoted through use of R-value claims and that requiring these products to comply with the Rule may be achieved with little additional burden upon the Commission. NAIMA recommended that the Commission require testing of duct insulations, including radiant ''bubble packs,'' under ASTM C 1363 because it would benefit retail consumers. If all claims were judged by the same method, consumers would have greater confidence in R-value performance and protection against fraudulent claims.[10]

NAIMA agreed that the Commission should not apply the Rule to *pipe* insulations because: (1) pipe products are not readily available at retail stores, so consumers do not require protection; (2) the nature of pipe insulation makes required disclosures of R-value difficult—for example, R-values for pipe insulations vary with every gradation of pipe size; (3) the assignment of pipe R-values is based on technical principles so complex and complicated that the average consumer could not begin to comprehend the nuances differentiating the R-value of one pipe insulation from another; and, (4) pipe insulation is not marketed in terms of thermal performance. NAIMA maintained, moreover, that it was not aware of any misrepresentations of R-values for pipe insulation in the marketplace.[11] Without elaboration, Elastizell opposed any change to the Rule in this regard.[12]

Discussion

As explained in the ANPR, the Commission excluded pipe insulation from the original Rule's coverage based on uncontroverted evidence that it was used primarily to prevent moisture condensation on low temperature pipes, rather than energy conservation; that R-value was not a reliable basis for comparing the performance of pipe insulations; and that pipe insulations were not commonly advertised in terms of energy-savings potential. Similarly, it excluded duct insulations other than duct wrap because only duct wrap was used extensively in the residential setting. The Commission explained that, since the original proceeding, the staff had reviewed consumer advertising for these products and found no information to indicate that these facts have changed. The Commission concluded that, unless interested parties presented information that sellers are misrepresenting the thermal performance of these products to consumers, the Commission would not propose extending the Rule to cover them. 64 FR at 48027.

Although DOE and NAIMA maintained that the use of flexible duct insulation has become much more common in residential applications than it was when the Rule originally was promulgated, no commenters indicated that sellers are misrepresenting the thermal performance of pipe or duct insulation products to consumers. In addition, although DOE raised doubt concerning the basis for the labeled R-value of these products, NAIMA indicated that its members base their thermal performance claims for all residential rigid and flexible duct products on ASTM test methods referenced in the Commission's Rule. The Commission recognizes that including these products under the Rule may provide some benefit to consumers. Absent evidence of widespread deception, however, it is difficult to conclude that such benefits would be significant enough to support a change to the Rule. Accordingly, the Commission is not proposing amendments on this issue but seeks additional comment including any additional information on industry practice for testing and labeling these products and the costs new FTC testing and labeling requirements would impose in this area.

2. Non-residential Insulations

Background

In the ANPR, the Commission indicated that it did not plan to extend the Rule to cover sales to the commercial market. The Commission did, however, request information about whether sellers in this market are misrepresenting the thermal performance of insulation products or are engaging in other unfair or deceptive practices.

Comments

The Commission received ten comments regarding the extension of the R-value Rule to insulation products used in commercial buildings. PIMA,

International Paper (''Uniwood''), (11); ConsultMort, Inc. (''ConsultMORT''), (12); AFM Corporation (''AFM''), (13); Advanced Foil Systems, Inc. (''AFS''), (14); Carlton Fields for Cellucrete Corporation (''Cellucrete''), (15); Tenneco Building Products (''Tenneco''), (16); Therese K. Stovall for Oak Ridge National Laboratory (''ORNL-1''), (17); The Polyurethane Foam Alliance (''SPFA''), (18); The Reflective Insulation Manufacturers Association (''RIMA''), (19); Dan Reicher, Assistant Secretary for Energy Efficiency and Renewable Energy, for the United States Department of Energy (''DOE''), (20); Therese K. Stovall for Oak Ridge National Laboratory (''ORNL-2''), (21). The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. The comments are organized under the Labeling and Advertising of Home Insulation Rule (''The R-value Rule''), Matter No. R811001, under the category: ''ANPR Comments, R-value Rule, 16 CFR Part 460.''

[9] DOE (20), p. 2; DOE also recommended that the FTC consider the issue of competitive advantage of installations using duct wrap (which must show an R-value) vs. flex duct (with integral insulation that is not covered by the Rule).

[10] NAIMA (9), pp. 6–7, Appendices 8–10.

[11] *Id.* p. 7.

[12] Elastizell (10), p. 1.

Tenneco, and NAIMA agreed with the Commission's preliminary position stated in the ANPR.[13] NAIMA and Tenneco maintained that commercial buyers generally possess greater knowledge about products used in the regular course of business and are less vulnerable to deceit and confusion. Tenneco explained that commercial professionals must possess working knowledge of thermal properties of entire building systems, well beyond simple R-values, and that they often rely on independent large-scale performance testing or calculations at specific conditions. Tenneco contended that it would be difficult to craft Rule provisions that would adequately address these multiple performance scenarios. PIMA and NAIMA maintained that there is no evidence that manufacturers have engaged in improper marketing claims to commercial or industrial audiences. Finally, NAIMA and its members provide educational materials to commercial and industrial customers that, in their opinion, offer technical detail and comprehensive assessments on topics exclusively pertinent to commercial and industrial interests. NAIMA contended that these materials exceed the information the Rule requires be given to consumers.

Seven comments supported extension of the Rule to cover commercial applications.[14] Celotex stated that, while there is no evidence of misrepresentation, design professionals rely heavily on manufacturers for information and training, and an extension of the Rule's coverage would standardize and simplify the specification process for architects.[15] Information FPSA had gathered suggests a lack of knowledge among architects and specifiers about the proper methods for comparing insulation types.[16] Both Elastizell and Cellucrete, which offered similar comments, stated that competitors had engaged in deceptive advertising of the thermal performance of cellular concrete products.[17]

Discussion

As discussed in the ANPR, the Commission recognizes that applying the Rule to thermal insulation products used in commercial buildings might provide information to purchasers that could improve the energy efficiency of buildings, and otherwise prove useful. In addition, commenters have identified at least one example where sellers of commercial insulations may be engaged in unfair or deceptive practices. There is no indication from the comments, however, that such practices are widespread. Furthermore, as discussed in the ANPR, thermal insulation purchasing decisions for commercial building applications are made by architects or engineers in many instances. These professionals may require R-value and other performance information based on circumstances different from the uniform approach the Commission has determined necessary to provide accurate and understandable information to individual consumers. *See* discussion at 64 FR at 48027.

As several comments suggest, these architects and engineers may not always have the information or time necessary to consider these matters fully. According to some comments, an extension of the Rule would standardize and simplify the specification process for these professionals. At the same time, however, the Commission recognizes that extending the Rule would impose additional compliance burdens on industry members. Because professionals in the commercial field have greater knowledge compared to residential customers and the lack of evidence indicating unfair and deceptive practices are prevalent, the Commission finds that the potential benefits to commercial users would not justify the additional burdens that an extension of the Rule would impose. Accordingly, the Commission is not proposing to extend the Rule to cover sales to the commercial market. The Commission will continue to address concerns in this area as they arise pursuant to its general authority under section five of the FTC Act.

B. Disclosing In-Use Thermal Performance Values

1. Performance of Insulations in Actual Use

Background

In the ANPR, the Commission discussed earlier comments relating to seasonal factors and other variables that can affect the R-value of insulation products in actual use. 64 FR at 48027. Specifically, previous commenters identified factors that affect performance in attics during winter conditions and factors that affect performance under winter versus summer conditions and stated that the Rule does not sufficiently account for these factors. Some of the comments addressing this issue pointed to ORNL research that demonstrates a reduction in R-value of very low-density fibrous insulations installed in open or vented attics when the temperature difference between the heated area of a home and its cold attic becomes particularly great. This can occur during the most severe winter conditions in some portions of the United States.

An ORNL representative explained that ASTM was developing a method of determining the thermal performance of attic insulations during winter conditions, ASTM C 1373,[18] and suggested that the Commission incorporate it into the Rule when it is adopted. As discussed in the ANPR, one commenter maintained that several factors, in addition to R-values, that are determined under steady-state conditions have a major effect on product performance, such as air permeability and temperature differential. The commenter contended that a measurement known as the Rayleigh number provides a more complete indication of the effect that the combination of R-value, air permeability, and temperature differential have on insulation materials under specific conditions, and that it represents a more accurate measure of insulating capabilities than R-value alone. This commenter suggested that the Commission require the Rayleigh number on packages and promotional materials of insulation products.[19]

The Commission requested comment on alternatives to steady-state R-values, and specifically asked that commenters address six areas: (1) specific alternative measurements that are available to describe the *in situ* use of home insulation products better than the steady-state R-values required by the Rule; (2) which *in situ* conditions should be accounted for; (3) whether different types or forms of home insulation products perform differently under specific *in situ* conditions, and how significant this different performance is under specific circumstances (*e.g.*, how much would the difference in performance in actual

[13] PIMA (3), pp. 2, 9; Tenneco (16), p. 1; NAIMA (9), pp. 7–9.

[14] EPSMA (6), p. 2; Celotex (7), pp. 1–2; FPSA (8), p. 2; Elastizell (10), pp.1–4, *passim*; AFM (13), pp. 1–2; Cellucrete (15), pp. 2–4; SPFA (18), p. 1.

[15] Celotex (7), pp. 1–2.

[16] FPSA (8), p. 2.

[17] Elastizell (10), pp.1–4, *passim*; Cellucrete (15), pp. 2–4.

[18] Standard Practice for Determination of Thermal Resistance of Attic Insulation Systems Under Simulated Winter Conditions (''ASTM C 1373'').

[19] The Rayleigh number is a measure of the tendency of air to move. In the context of very low density thermal insulations installed on the floor of an open attic during very cold periods, the Rayleigh number is a ratio between the buoyant force of warmer air (the air at the bottom of the insulation near the heated interior of the house) attempting to move upward and the resistance of the insulation fibers against that upward air movement. The higher the number, the stronger the buoyant force, and the greater the reduction of the insulation's steady-state R-value. 64 FR 48028, n. 22 (1999).

use make on the consumer's annual fuel bill); (4) whether accepted test methods are available to measure *in situ* performance; (5) how the results of *in situ* performance measurements could be described in a meaningful manner to consumers; and (6) the benefits and costs to consumers and sellers that would be associated with the use of the alternatives. 64 FR 48027–29 (discussion of comments from Greenstone/Tranmer).

Comments

Two commenters supported no change to the Rule. PIMA asserted that there are no test procedures currently available for *in situ* applications. It pointed out that ASTM C 236, C 96 and C 1363 (a new standard that combines 236 and 976) are lab methods that require steady-state conditions and are not appropriate for *in situ* measurements. PIMA maintained that, while ASTM C 1041 and C 1046 apply to field use, they are used to measure heat flux on buildings, complicated calculations are necessary to extrapolate R-values, and the results are intended for use by skilled industry practitioners.[20]

NAIMA contended that it would be impossible to determine new R-value requirements to take these factors into account and that, in the end, such disclosures would create consumer confusion rather than clarity. NAIMA asserted that once results of *in situ* performance of many fibrous insulations over a range of temperature conditions were analyzed, initial concerns raised by the cold-temperature effects abated because these temperatures rarely lasted long enough to result in significant energy loss or economic cost.[21] NAIMA also maintained that no one term fully explains all aspects of performance. In its view, many consumers would be confused by the use of other terms like the Rayleigh number, and the explanations that would be needed if other factors were included in the Rule would be cumbersome and confusing. NAIMA explained that, even though extreme temperature differentials are a potential problem in a limited part of the country, consumers throughout the country would be exposed to the concern through national marketing programs. NAIMA echoed PIMA's concern that ASTM C 1363 lacks application to a real home setting where conditions are variable and unpredictable. NAIMA maintained that, in light of such variables, the likelihood of obtaining dependable and authoritative *in situ* R-values remains a distant possibility, and any attempt to explain the myriad of factors would overwhelm consumers and defeat the purpose behind the Rule's disclosure requirements.[22]

Two commenters supported a change to the Rule in this regard. CIMA noted that, for dry-applied loose-fill cellulose insulation, large temperature differentials may in fact increase the material's R-value. It referred to tests conducted at ORNL on loose-fill fiberglass insulation that showed a 40% to 50% decrease in R-value in simulated extremely cold climates, while identical tests on dry-applied loose-fill cellulose insulation showed that the R-value actually increased from R–18 at 40° F to R–20.3 at 18°. CIMA maintained that this difference in performance at cold conditions must be addressed in the Rule for competitive fairness and to protect consumers in cold climates. To accomplish this, CIMA recommended that the Commission expand the Rule to cover the airflow resistance of insulation (determined at the insulation's settled density) as well as the laboratory-determined R-value.

CIMA explained that airflow resistance can be determined in the laboratory by measuring simultaneously the pressure difference and airflow rate across a test specimen of known dimensions. This yields the airflow permeability, which can be used to calculate the Airflow Resistence Index (''ARI''), a scale from near zero to approximately 100 that CIMA maintained could provide a simple way for consumers to compare products. CIMA contended that it is possible to calculate the impact of convection on R-value using published technical information, and maintained that a newly adopted ASTM standard (ASTM C 1373) contains a method for measuring the effect of free convection on thermal resistance. CIMA recommended amending the Rule to require disclosure of the ARI-value in labels, fact sheets and ads.[23]

Uniwood supported the development of an alternative method of measuring the relative insulating performance because, it maintained, the R-value alone ignores cost considerations and, as such, is misleading to consumers (a goal of the Rule is ''meaningful, cost-based purchasing decisions''). It suggested that the Commission convene an advisory panel to recommend alternative methods that would account for all variables, including air permeability and temperature difference. Until the results of such a panel are implemented, Uniwood suggested that the Rule require the disclosure of Rayleigh numbers.[24]

Discussion

As the Commission explained in the ANPR, the Rule requires that R-values be determined according to ASTM test methods that provide R-value measurements under ''steady-state'' or ''static'' laboratory conditions, which do not take into account transient environmental factors (like circulation) that can affect insulation performance in actual use. Past evidence on the rulemaking record indicates that, although environmental conditions may affect the R-value number determined in steady-state tests, these conditions will affect competing home insulation products in approximately the same manner. *See* 64 FR 48027–28. Thus, the Commission continues to believe that the ASTM steady-state R-value test methods permit fair comparisons of product R-values on a standardized basis and provide consumers with a reliable, uniform, and comparative basis for their purchasing decisions. *See* discussion at 64 FR 48028–29.

As CIMA asserted, more recent information may indicate differences in the performance of various home insulation products at very low temperatures. The Commission understands that there are variables for which the uniform test methods specified in the Rule may not account, such as the design characteristics and geographical location of the building, the specific application in which the product is installed, outside and inside temperatures, air and moisture movement, installation technique, and others. The Commission believes that any effort to reflect these variables in the Rule's requirements would significantly complicate both compliance and communication to consumers, without a commensurate level of benefit. Accordingly, the Commission is not proposing to expand the Rule's requirements at this time to cover variables that might affect insulation performance in actual use.

Manufacturers and other sellers, however, may provide additional, truthful, substantiated information voluntarily to consumers about the manner in which their products perform in actual use. For example, if a product exhibits increased performance at high temperature differentials and such performance is not reflected by the disclosure requirements of the R-value Rule, the manufacturer may provide that

[20] PIMA (3), pp. 9–10.

[21] *See* NAIMA (9), Appendix 14.

[22] NAIMA (9), pp. 9–10.

[23] CIMA (4), pp. 3–6.

[24] Uniwood (11), pp. 1–2.

information voluntarily to consumers as long as the claims are truthful and substantiated.

2. Performance of Building System Components That Include Insulation

Background

In the ANPR, the Commission sought comments on whether the Rule should require disclosure of thermal performance values of building system components that include insulation. Such systems generally involve structural insulation panels, which are building systems products that include insulation as a major component.

Comments

Three comments opposed requiring the thermal efficiency testing of insulation systems. PIMA asserted that the necessary information is not available to include testing requirements for these systems in the Rule. It contended that a great deal of testing and research would be needed to develop the necessary system evaluation methods.[25] EPSMA maintained that it would be difficult to draft testing and disclosure requirements that would be meaningful to consumers.[26] NAIMA adamantly opposed requiring disclosure of the overall thermal efficiency of building components because in its view, there is no consensus standard or test procedure capable of quantifying the overall thermal performance of structural insulation panels. NAIMA maintained that even the manufacturers of such products recognize that additional research and development would be necessary before requiring such disclosures. NAIMA explained that the performance of these systems is highly dependent on factors not under the control of the manufacturer, such as air-tightness of joints between the components and other parts of the building envelope (like windows and doors). In NAIMA's view, these factors are extremely difficult, if not impossible, to quantify in a fair and easy-to-understand disclosure that would benefit the general public. Finally, NAIMA pointed out that the Rule does not prevent manufacturers from providing additional information about their products' performance due to factors other than R-value.[27]

DOE stated that thermal bridging (particularly due to steel studs), other wall elements (windows, doors, and corners), and other construction details all have major effects on actual thermal performance. The Department suggested that the Commission address these issues by requiring additional disclosures. DOE recommended that the Commission adopt the whole wall rating system developed by ORNL.[28]

Discussion

The Commission continues to believe that additional research would be required to develop the procedures necessary to implement a requirement that sellers include in their R-value disclosures information about the performance of their products when used in various types of construction. Even if such procedures were developed, as a practical matter, it might be very difficult to draft testing and disclosure requirements that could take the multiple variables involved into account in a manner that would result in a disclosure that would be meaningful to consumers. In addition, it would be difficult to ensure that the benefits from such procedures (*e.g.*, better information for consumers) outweighed the additional costs that would be imposed on industry members (*e.g.*, for additional testing and disclosures). *See* 64 FR 48029–30.

Accordingly, the Commission is not proposing to amend the Rule at this time to require the disclosure of insulation performance based on testing of home insulation products in different types of applications. Manufacturers and sellers may voluntarily provide additional information about how their products perform in actual use, if they substantiate their claims.

C. Disclosing R-Values That Account for Factors Affecting R-Value

1. Aging

a. Cellular Plastics Insulations

Background

Certain types of cellular plastics insulations (polyurethane, polyisocyanurate, and extruded polystyrene boardstock insulations) are manufactured in a process that results in a gas other than normal air being incorporated into the voids in the products. This gives the product an initial R-value that is higher than it would have if it contained normal air. A chemical process, known as aging, causes the R-value of these insulations to decrease over time as the gas is replaced by normal air. 44 FR at 50219–20. How long the aging process lasts depends on whether the product is faced or unfaced, the permeability of the facing, how well the facing adheres to the product, and other factors. 64 FR 48024 at 48030–31.

The current Rule addresses this aging process by requiring that R-value tests be performed on specimens that ''fully reflect the effect of aging on the product's R-value.'' Section 460.5(a)(1) of the Rule accepts the use of the ''accelerated aging'' procedure in General Services Administration (''GSA'') Purchase Specification HH–I–530A (which was in effect at the time the Commission promulgated the Rule) as a permissible ''safe harbor'' procedure, but also allows manufacturers to use ''another reliable procedure.'' *See* discussion at 44 FR at 50227–28. The ''accelerated'' procedure was designed to age these insulations in a shorter period than they would age under normal usage conditions. Under the ''accelerated aging'' method in the GSA specification, test specimens are aged for 90 days at 140° F dry heat.

GSA amended its specification in 1982 to allow the use of an optional aging procedure (in addition to the ''accelerated'' method) under which test specimens are aged for six months (''180 days'') at 73° F ± 4° F and 50 % ± 5 percent relative humidity (with air circulation to expose all surfaces to the surrounding environmental conditions). An industry group, the Roof Insulation Committee of the Thermal Insulation Manufacturers Association (''RIC/TIMA''), specified the use of similar conditions in a technical bulletin it adopted at about the same time. In response to adoption of the alternative 180-day aging procedure by GSA and RIC/TIMA, the Commission's staff advised home insulation sellers that the alternative procedure appeared to be reliable and could be used to age cellular plastics insulations. The staff cautioned, however, that manufacturers of insulations faced with materials that significantly retard aging may need to age test specimens for a longer period of time, and that the staff would consider whether the alternative procedure was acceptable for specific products on a case-by-case basis.[29]

The Commission in the ANPR indicated that Dr. Wilkes from ORNL reported that ASTM was developing a new method of determining the aged R-value of unfaced cellular plastics board stock insulations based on R-value tests of thin samples sliced from the center of the boards. This test procedure has since been published as ASTM C 1303–95. 64 FR at 48031.

[25] PIMA (3), p. 10.

[26] EPSMA (6), p. 3.

[27] NAIMA (9), p. 10.

[28] DOE (20), p.2.

[29] *See, e.g.*, staff opinion letter dated May 5, 1983, to Manville Corporation. GSA thereafter rescinded its specification (along with other insulation specifications) and now requires that federally purchased insulations comply with ASTM insulation material specifications.

Comments

The comments highlighted the differences of opinion about the appropriate test procedure to account for the aging of cellular plastics. In large part, the primary issue was whether the Commission should amend the Rule to include a relatively new standard, ASTM C 1303–95 (''Estimating the Long-Term Change in the Thermal Resistance of Unfaced Rigid Closed Cell Plastic Foams by Slicing and Scaling Under Controlled Laboratory Conditions''). Comments also addressed the need for the Commission to adopt additional test procedures for the measurement of other materials.

NAIMA stated that the cellular plastics industry has struggled for many years over what methodology should be used to determine the long-term in-service thermal performance of cellular plastics insulations.[30] In NAIMA's view, none of the available methods has been agreeable to all industry sectors. Because of this lack of agreement, NAIMA recommended that the Commission adopt aging methods already accepted by the majority of industry representatives and formally approved by ASTM: (1) ASTM C 1289 for polyisocyanurate; (2) ASTM C 578 for extruded polystyrene; and (3) ASTM C 1029 for polyurethane. NAIMA noted, however, that there is currently no acceptable procedure for determining long-term thermal performance of impermeably faced cellular foam insulations. Until a level playing field can be established, NAIMA recommended maintaining and reporting R-values based on aging for the currently accepted 180-day period. NAIMA also indicated that, although the 180–day value does not in its view provide ''real design'' (actual performance) information, it is a value with which the consumer is familiar.

PIMA generally supported the adoption of ASTM standards, except C 1303. It opposed the incorporation of C 1303 into the Rule because, in its view, the standard does not address the effect of facings and the test's precision for cellular plastics was developed on a limited set of samples, in some cases consisting of experimental products. PIMA maintained that the standard is intended as a laboratory research tool to evaluate chemical changes and should not be used as a test for making R-value claims under the FTC's Rule. In addition, PIMA contended that the codification of C 1303 would impose on manufacturers a significant additional testing cost of $25,000–30,000 per product and stated that only a limited number of testing labs perform the test. PIMA asserted that the reason for this high test cost is the level of detail required in C 1303 to provide technical measurements of blowing agent diffusion coefficients and the damaged surface layer caused by slicing.

PIMA did, however, recommend that the Commission adopt C 1289 (for faced rigid cellular polyisocyanurate board); C 1029 (for extruded polystyrene); and C 591 (for polyurethane). PIMA maintained that, for products ''with relatively non-permeable facings,'' the Rule's current aging procedures are adequate. PIMA also suggested that expanded polystyrene insulation products should be required to be tested for aging under suitable procedures similar to those in ASTM C 578. PIMA stated that, as a general matter, ASTM standards should be adopted because they represent the best available techniques developed by industry consensus and they take into account variations in materials and manufacturing as well as the numerous factors that can affect the aging process.[31]

ConsultMORTinc also opposed adoption of ASTM C 1303, suggesting that C 518 is an appropriate test for plastic foams at full product thickness if 180–day lab-conditioned (six-month lab aged) values are used. ConsultMORTinc contended that the ASTM C 1303 test method is only an ''estimate'' and should not be used for appraising performance in actual use, and stated that the procedure does not address the effects of ''manufactured thickness.'' ConsultMORTinc maintained that its own studies demonstrate that thicker polyurethane foams are protected from gas permeation for one year or more, which suggests that the C 1303 slicing method is inaccurate for thicker foams.[32]

SPFA supported full product thickness testing at industry-accepted 180-day lab-conditioned aging, based on ConsultMORTinc data. It advised against the improper use of ASTM C 1303, maintaining that the standard does not account for the effect of extra thickness in protecting the product from outside air infiltration, and does not account for the fact that spray polyurethane foam is applied in several layers, or ''lifts,'' that are surfaced with denser polymer skin, or for substrate or covering in roofing applications.[33]

Tenneco opposed adoption of ASTM C 1303 for aging foam plastic insulations, emphasizing that the test method itself indicates that its precision and accuracy are not yet established, and pointing out that its reproducibility is not yet understood. In addition, Tenneco contended that the test does not accurately reflect long-term aging because it does not account for the effect of skin surface or facings and fails to account for the fact that gas diffusion is multi-dimensional. Speaking as a member of the ASTM C 1303 Task Group, Tenneco maintained that the standard was intended primarily to estimate R-values of core material for purposes of new product development, and stated that concern was expressed during the test's development that it might inappropriately be used as a regulatory tool.[34]

ESPMA supported a combination of accelerated aging tests and mandatory disclosures about R-values declining significantly with age beyond that indicated by tests. In its view, an accelerated aging test alone does not ''fully reflect'' the effects of aging. ESPMA pointed out that, according to RIC/TIMA, tests alone are meant to give a standard basis for comparison, not to predict long-term R-values accurately. It also supported exploration and use of limited aging procedures to predict long-term R-values as well as requirements for disclosures when accelerated aging procedures are used. EPSMA suggested that an appropriate R-value aging disclosure can be accomplished either through qualitative disclosure or quantitative disclosure. For instance, EPSMA suggested that one possible qualitative R-value disclosure could read: ''The R-value of this insulation has been established using a [identify test procedure] accelerated aging procedure. Because of aging, the longer term R-value of this insulation in your home may be significantly lower than the R-value stated.''[35]

Celotex supported the use of ASTM C 1303 to predict the effects of aging in permeable-faced cellular plastics (polyisocyanurate and polystyrene) blown with a non-air agent, and the use of ASTM C 1289 for impermeable-faced boards. Celotex recommended the implementation of a two-year phase-in period to allow time for industry members to conduct appropriate testing. It contended that the accuracy of the ASTM C 1303 test is demonstrated by consistency with the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (''ASHRAE'') Handbook. In addition, Celotex stated that it had run multiple

[30] NAIMA (9), pp. 10–11.

[31] PIMA (3), pp. 2–6, 10.

[32] ConsultMORTinc (12), pp. 1–2.

[33] SPFA (18), p. 1.

[34] Tenneco (16), pp. 1–2.

[35] EPSMA (6), pp. 3–6.

test programs that indicated that ASTM C 1289 is the most reliable aging method for cellular plastic insulation with impermeable facings blown with non-air agents.[36]

FPSA also supported adoption of ASTM C 1303 for unfaced and permeable faced products. FPSA recommended the use of a five-year aged value disclosure, which has been given serious consideration in Canada. It urged that a substantively comparable consensus standard should be adopted for faced products. FPSA suggested that the Commission retain currently acceptable tests (such as the 180-day value) for comparison purposes. It also pointed out that ASTM C 591 is outdated and reflects the current FTC guideline for long-term aging. FPSA also noted that expanded polystyrene products are not subject to aging. Finally, FPSA maintained that the 180-day value is not an accurate reflection of long-term aging of polyisocyanurate products, although it is acceptable for polystyrene because of the different aging curves pertaining to the two products.[37]

ORNL and DOE supported the adoption of ASTM C 1303 because, according to ORNL, it represents a clear, specific, industry consensus standard for unfaced foam products, to the exclusion of the unspecific ''or another reliable procedure'' the Rule now allows. Alternative methods are inadequate according to ORNL, because it contends the elevated temperature method, which is not correlated to results in normal use, and the 180-day method ignores long-term aging that occurs in all but the thinnest products. ORNL supported direct aging of impermeable-faced foam products because, it maintained, no satisfactory aging method exists, and tests show that some products age at the same rate as unfaced products while others show little aging.[38]

ORNL also indicated, in a late comment filed in response to statements made in other comments regarding the C 1303 test and the thickness of specimens, that the C 1303 test had been revised and significantly improved. ORNL challenged the assertion that C 1303 cannot account for foam products of different thicknesses. According to ORNL, variation in aging behavior with foam thickness is the very basis for the test procedure's methodology. ORNL also argued that the 180-day full-thickness R-value fails to provide necessary information to building designers and should not be compared to the R-value of competing products that do not undergo the aging process. ORNL contended that, in contrast, C 1303 provides the product's time-averaged R-value over the product's lifetime, and accurately credits both the high thermal resistance during early years of product use and the lower values during later years.[39]

Discussion

In considering amendments to the R-value Rule, the Commission, among other things, looks to ensure that consumers receive, wherever possible, the most accurate, dependable information that is reasonably available for residential insulation products. Generally, the Rule requires the use of certain standards to ensure that industry members take into account factors such as aging or settling that can affect the R-value of material. Even if there are no standards for a particular home insulation product, that product is still covered by the Rule and manufacturers and sellers must use a reliable method that will provide a reasonable basis for their R-value claims. If the method used is unreliable and their claims are thus unsubstantiated, they could be subject to enforcement action by the Commission. The Commission does not develop the technical standards for determining the R-value for various types of residential insulations. Instead, it generally looks to those tests that are considered to be reasonable by industry members, academicians, government experts, and others in the technical community.

The comments discussed above suggest industry concerns that the incorporation of new consensus standards may create a real or perceived disadvantage for manufacturers of certain types of insulation. For example, there is disagreement regarding the application of ASTM C 1303 to insulation subject to the effects of aging. Some critics of the standard emphasize the relatively narrow scope of the test, while others maintain that it should not be incorporated into the Rule at all. In contrast, those who endorse the standard believe it would improve the accuracy of the R-values calculated for the products. There is also a Canadian standard (Can/ULC–S 770 ''Standard for Determination of Long Term Thermal Resistance of Closed Cell Thermal Insulating Foams'') that is designed to account for the effects of aging on the R-value of cellular plastic insulation. Work is ongoing to improve both ASTM C 1303 and S 770 and reconcile some of the differences in the two approaches.[40]

The Commission recognizes the need to amend the Rule, when necessary, so that it reflects testing improvements that will provide more accurate information for consumers. The Commission, however, does not propose to amend section 460.5(a)(1) of the Rule to require the use of ASTM C 1303 for homogeneous, unfaced, rigid closed cell polyurethane, polyisocyanurate, and extruded polystyrene insulations. As discussed above, ASTM C 1303 has limited applicability because it only applies to unfaced, homogeneous material. If the FTC adopted this procedure, it is likely very similar products (*e.g.*, insulation boards with paper facing) would continue to be tested under the older approach (the ''180-day'' accelerated aging test). The Commission is reluctant to incorporate the C 1303 procedure into the Rule at this time because it is unclear whether it is sufficiently broad and adequately developed to warrant its incorporation as a legal requirement for all manufacturers of cellular plastic insulation.

Nevertheless, the Commission is interested in seeking comments on this evolving issue and may reconsider its views if warranted by the comments. The Commission seeks comment on whether the new standards (ASTM C 1303 and Canadian S 770) are sufficiently developed to be imposed on all industry members as a legal requirement in the R-value Rule. In particular, the Commission requests more information regarding the scope of applicability of C 1303 (*e.g.*, for faced and unfaced boards) and likely changes to the procedures in the future. In addition, the Commission also requests comment on whether the differences in results achieved by C 1303 as compared to the current procedure (180-day test) are significant at smaller board thicknesses and whether such thicknesses are prevalent in the residential insulation market. The Commission also would appreciate information about the expected impact that the use of this procedure would have on consumer buying decisions.

If the comments provide new and significant information clearly indicating that ASTM C 1303 should be incorporated into the Rule, the Commission may consider amending the Rule to require use of C 1303 (or perhaps S 770) for those products

[36] Celotex (7), p. 2.

[37] FPSA (8), pp. 2–6.

[38] ORNL–1 (17), p. 1; USDOE (20), p. 1.

[39] ORNL–2 (21), pp. 1–2.

[40] *See Stovall et al.*, ''A Comparison of Accelerated Aging Test Protocols for Cellular Foam Insulation,'' in *Insulation Materials: Testing and Applications: 4th Volume*, ASTM International (2002).

covered by the test procedure.[41] It is likely that such an amendment would displace the 180-day test that is generally used currently for such products. Accordingly, commenters who oppose the incorporation of C 1303 into the Rule and believe that the 180-day test is adequate should submit their views to the Commission.

Although the Commission is not proposing to incorporate ASTM C 1303 into the Rule at this time, it is proposing to amend the Rule to require that other types of polyurethane, polyisocyanurate, and extruded polystyrene insulation be aged using, where appropriate, ASTM C 1029–96 (''Standard Specification for Spray-Applied Rigid Cellular Polyurethane Thermal Insulation''), ASTM C 591–94 (''Unfaced Preformed Rigid Cellular Polyisocyanurate Thermal Insulation''), and ASTM C 578–95 (''Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation'').[42] For all other polyurethane, polyisocyanurate, and extruded polystyrene insulation subject to aging but not specifically covered by one of the procedures listed above, industry members must use the procedure in paragraph 4.6.4 of GSA Specification HH–I–530A or another reliable procedure. The Commission seeks comment on whether the incorporation of these procedures into the Rule would be appropriate and whether these procedures raise the same or similar types of concerns associated with ASTM C 1303 as discussed above.

b. Reflective Insulations

Background

In the ANPR, the Commission discussed whether the Rule should require that reflective (aluminum foil) insulation products be tested for emissivity and R-value ''using samples that fully reflect the effect of aging'' on the product's emissivity and R-value. In particular, the Commission raised concerns about the effects of the accumulation of dust or corrosion on the foil. Because the claims for all types of home insulation products should take into account factors that affect the products' thermal performance, the ANPR invited comment on whether dusting or corrosion of reflective insulations in actual applications is a problem resulting in lower R-values than claimed, on the extent of any degradation of R-value, and on how the effect of dusting or corrosion on R-value could most accurately be determined.

Comments

Several comments suggested that the collection of dust on foil can significantly decrease the material's thermal performance. NAIMA maintained that evidence supports that dusting and corrosion on reflective insulations have a detrimental effect on the product's R-value. NAIMA stated that a satisfactory test method for determining the R-value of reflective insulation must be able to account for the debilitating effect of dust and corrosion on the performance capacity of the insulation.[43] According to NAIMA, DOE's Radiant Barrier Attic Fact Sheet (June 1991) reported laboratory measurements verifying that dust on the surface of aluminum foil increases the product's emissivity and decreases its reflectivity. NAIMA stated that DOE concluded that dust or other particles on the exposed surface of a radiant barrier will reduce its effectiveness and, therefore, reflective insulations installed in locations that collect dust or other surface contaminant will have a decreasing benefit over time. NAIMA asserted that when DOE monitored reflective insulations installed in a dusty attic, DOE observed that 50% of the insulation's effectiveness dissipated after the first year of installation.[44] According to NAIMA, DOE's findings have been repeated in other studies.[45]

RIMA contended that foil is not subject to significant aging due to corrosion because it oxidizes naturally, providing corrosion protection. RIMA asserted furthermore that ASTM C 1224 (''Standard Specification for Reflective Insulation for Building Applications'') requires testing for corrosion. RIMA maintained that dust was not a great concern for foil because, pursuant to C 1224, these materials are installed in closed-cell cavities regardless of orientation, thus preventing or minimizing dust.[46]

Discussion

The Commission recognizes that the accumulation of dust or corrosion on foil can be significant enough to affect performance. However, as RIMA pointed out, the degree to which performance is affected will depend on the foil's application. As a general matter, reflective insulations installed in locations that collect dust or experience surface contamination will have a decreasing benefit over time. Claims for all types of home insulation products should take into account factors that affect the products' thermal performance. Accordingly, while the Commission does not believe an amendment to the Rule is warranted, it notes that manufacturers should always take into account factors that affect their products' thermal performance when making performance claims for foil products, especially when there is a reasonable expectation that the products will be installed in locations associated with significant dust accumulation. The same holds true for any effects that corrosion may have on the long-term performance of reflective insulations.

2. Settling

a. Loose-Fill and Stabilized Insulations in Attics

In the original rulemaking proceeding, the Commission determined that all dry-applied loose-fill insulation products tend to settle after being installed in open (or unconfined) areas such as attics. Settling reduces the product's thickness, increases its density, and affects its total R-value. The amount of settling depends on several factors, including the raw materials and manufacturing process used, and the installer's application techniques (which affect the insulation's initial thickness and density). 44 FR at 50228.

To ensure that claims made to consumers are based on long-term thickness and density after settling, section 460.5(a)(2) of the Rule requires that the R-value of each dry-applied loose-fill home insulation product be determined at its ''settled density.'' The Rule requires that manufacturers of dry-applied loose-fill *cellulose* insulation for attic applications test and disclose the R-value (as well as coverage area and related information) at the long-term,

[41] The text of such an amendment would appear in section 460.5(a)(1) of the Rule and would likely read: ''For polyurethane, polyisocyanurate, and extruded polystyrene, the tests must be done on samples that fully reflect the effect of aging on the product's R-value. To measure the effect of aging for unfaced homogeneous rigid closed cell plastic foams, follow the procedure in ASTM C 1303–95 (''Estimating the Long-Term Change in the Thermal Resistance of Unfaced Rigid Closed Cell Plastic Foams by Slicing and Scaling Under Controlled Laboratory Conditions'').'' The Commission may also consider adopting Can/ULC-S 770 in lieu of C 1303.

[42] The Commission is not proposing to require ASTM C 1289 (''Faced Rigid Cellular Polyisocyanurate Thermal Insulation Board'') as suggested by some commenters. The current version of this test procedure, ASTM C 1289–02, requires the use of the Canadian test procedure for aging (S 770) which appears in C 1289 as an annex. Because the Commission has decided not to include C 1303 (or S 770) in the Rule at this time, the Commission is not going to require the same or equivalent aging procedure through C 1289.

[43] NAIMA (9), pp.11–12. AFS echoed NAIMA's concerns, contending that dust can create emittance problems for foil in laid down, face-up attic applications, but not in face-down applications. AFS (14), p. 1.

[44] *Id.* at Appendix 15.

[45] *Id.* at Appendix 16.

[46] RIMA (19), p. 1.

settled density determined according to paragraph 8 of ASTM C 739–91, commonly referred to as the ''Blower Cyclone Shaker'' (''BCS'') test.[47] Because a consensus-based test procedure had not been adopted for determining the long-term, settled density of dry-applied loose-fill *mineral-fiber* insulation for this type of application, the Rule only requires that R-values be based on long-term thickness and density after settling, and does not specify how to determine a specimen's density.[48]

Since the Commission promulgated the Rule, new forms of loose-fill home insulation products have been introduced for use in attic applications, including ''stabilized'' cellulose. ''Stabilized'' cellulose refers to a form of loose-fill cellulose insulation that contains a glue binder and is applied on attic floors with a small amount of liquid. Application of the insulation with the glue binder and liquid purportedly results in lower-density cellulose insulations that do not settle like dry-applied loose-fill cellulose insulations. The Rule does not currently specify a procedure for determining the long-term, settled density of stabilized cellulose insulation. In addition, questions have been raised regarding the settling of loose-fill insulations in the walls of site-built housing and in both the attics and walls of manufactured housing. 64 FR 48032.

i. Dry-applied Loose-fill Cellulose in Site-Built[49] Attics.

Comments on Dry-applied, Loose-fill Cellulose Insulations for Use in Site-Built Home Attics

Two commenters addressed the issue of dry-applied loose-fill cellulose in attics. NAIMA supported the current design density test (ASTM C 739–91) (''Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation'') required by the Rule for loose-fill cellulose. NAIMA urged the Commission to revise the Rule to require use of sample preparation techniques, stabilization times, and guidance on gauging the specimen's density in the test area according to ASTM C 687 for *all types* of loose-fill insulations, pointing out that ASTM C 739 already requires cellulose insulation manufacturers to conduct testing as prescribed in C 687. NAIMA also recommended that the Commission require, on dry-applied loose-fill cellulose bags, an installed thickness column that reflects the magnitude of settling and loss of thickness that can be expected.[50] It cited a Swedish long-term study that showed average settling of 16% to 21% of loose-fill insulation in attics in two test houses studied for up to seven years.[51] The study documented that certain variations in cellulose material directly affect settling. The study suggested that cardboard based cellulose seems to settle more than newsprint and that the degree of grinding also affects settling. The study also suggested that humidity variations, density, and vibration affected settling.

CIMA contended that the BCS test was promulgated about 20 years ago and is probably no longer appropriate for determining the settled density of dry-applied loose-fill insulation. CIMA stated that current studies of actual installations indicate that settlement of loose-fill cellulose insulation is typically between 12% and 20% in residential applications, while the BCS test results suggest a settlement of 30% or more. By specifying a test that significantly overstates cellulose settlement, the Rule, in CIMA's view, places dry-applied loose-fill cellulose insulation at a competitive disadvantage (compared to fiberglass) that may result in an annual loss of 50 million dollars in revenues to cellulose insulation manufacturers.[52]

Discussion of Dry Applied Loose Cellulose in Site-Built Attics

In the absence of an accepted alternative to the test procedures in ASTM C 739, the Commission is reluctant to amend the Rule to eliminate the established BCS test. Moreover, the Commission does not believe that further prescriptive requirements, as suggested by NAIMA, are warranted and is thus not proposing the use of sample preparation techniques, stabilization times, and guidance on gauging the specimen's density in the test area according to ASTM C 687 for *all types* of loose-fill insulations. This standard practice is already required for loose-fill cellulose insulation through the requirements in ASTM C 739 (currently required by the Rule). It is unclear whether the application of this technique would significantly improve the accuracy of R-value claims for other loose-fill materials. The Commission does propose, however, to update the current reference to the ASTM C 739 in section 460.5(a)(2) to reflect the most current version (1997). The Commission also proposes to address the issue of installed thickness as suggested by NAIMA (*see* § V.E.1.c.ii. of this document).

Although the Rule requires manufacturers of dry-applied loose-fill cellulose to determine the R-value and coverage at the settled density determined according to the BCS procedure, manufacturers who can demonstrate that the BCS procedure is inappropriate for their products can petition the Commission for an exemption that would allow them to determine the settled density of their products according to a more appropriate method. *See* 64 FR 48033.

ii. Dry-Applied Loose-Fill Mineral Fiber in Site-Built Attics

Section 460.5(a)(2) of the Rule specifies the procedures to be used in determining the settled density only for cellulosic, and not mineral fiber, insulation products. When the Commission promulgated the Rule in 1979, it expected that GSA soon would adopt a specific test procedure for determining the settled density of dry-applied loose-fill mineral fiber insulation products. 44 FR at 50228, 50239 n.239. GSA did not do so, and now accepts the use of ASTM standards, which do not specify procedures for determining the settled density of dry-applied loose-fill mineral fiber insulations. Reports of studies conducted by Oak Ridge National Laboratory during the 1980s demonstrate that certain loose-fill mineral fiber insulation products can settle following installation, resulting in a reduction of R-value. The results differed in the amount of settling and the effect of settling on the R-values of the specific insulation products studied, depending on the type of mineral fiber insulations studied (fiberglass versus rock wool products) due to differences in density. 64 FR at 48033.

The Commission indicated in the ANPR that it would be preferable to specify a uniform procedure for determining the long-term, settled density of dry-applied loose-fill mineral

[47] Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation (''ASTM C 739–91'').

[48] When the Commission promulgated the Rule, GSA had proposed adopting a settled density test procedure for loose-fill mineral fiber insulation products similar to the one it had adopted for loose-fill cellulose insulation products. Mineral fiber manufacturers contended, however, that they took settling into account in their coverage charts, and that if their insulations were installed according to their coverage charts, consumers would receive the R-values they claimed. The Commission imposed a general requirement that R-values of dry-applied loose-fill mineral fiber insulations be based on tests that take the adverse effects of settling into account, but did not specify how the settled density was to be determined. 44 FR at 50228. GSA never adopted a procedure for determining the settled density of mineral fiber insulations. *See* 64 FR 48032, n.46 (1999).

[49] The term ''site-built'' differentiates attics in manufactured housing.

[50] NAIMA (9), pp. 12–13.

[51] *Id.*, Appendix 17.

[52] CIMA (4), p. 3.

fiber insulation products, and solicited comments for this purpose. The Commission specifically requested any data that demonstrate whether any of the following, currently available test procedures, or others, would produce accurate and reliable, long-term settled density results for mineral fiber insulation products in attic applications: the BCS test procedure in ASTM C 739–91 (which currently is required for dry-applied, loose-fill cellulose insulation products); the ''Canadian drop box procedure,'' which GSA previously proposed for loose-fill mineral fiber insulations under Federal Specification HH-I–1030B;[53] the British Standard Vibration Test; and the procedure developed in Scandinavia by Dr. Svennerstedt. *Id.*

Comments on Dry-applied, Loose-fill Mineral Fiber Insulations for Use in Site-Built Home Attics

NAIMA commented that field measurements of the thickness of loose-fill mineral fiber insulation in open-blown attic applications show little or no settling. For example, according to NAIMA, the Mineral Insulation Manufacturers Association (''MIMA'') concluded, with ORNL concurring, that tests demonstrated that settling of loose-fill mineral fiber in attics is a minor factor in the final installed R-value delivered to the customer when the thickness and amount of material required by the bag label is installed. For insulation installed at or above label density and thickness, the calculated final R-values of loose-fill mineral fiber products were always at or above the labeled R-value. NAIMA contended that, because these materials do not settle significantly, no predictive settling method has been validated for these products. NAIMA argued that identical tests should not be required for both cellulose and mineral fiber because such an approach would yield meaningless results from duplicate tests on distinctly different substances, and would not create an even playing field.[54]

CIMA commented that, because there is no specific test for determining the settled densities of dry-applied loose-fill mineral fiber insulation, such materials may have labeled densities that are lower than actual settled densities, thereby depriving consumers of the amount of insulation they think they are purchasing. According to CIMA, recent independent third-party testing confirms that this is the case. CIMA recommended specific Rule language that would require that all dry-applied loose-fill insulation be subjected to the ASTM C 739–97 test for settled density.[55]

Discussion of Dry-applied, Loose-fill Mineral Fiber Insulations for Use in Site-Built Home Attics

The Commission recognizes that there is no consensus standard currently available to measure the settling of loose-fill mineral fiber insulations for use in site-built attics. In addition, on its face, ASTM C 739 applies to cellulosic fiber only. Thus, it would seem inappropriate for the Rule to require the application of that test procedure to loose-fill mineral fiber insulation. The Commission emphasizes that industry members must have a reasonable basis for their R-value claims that takes into account the effects of settling. In addition, the Commission proposes to amend the Rule to eliminate the reference to the GSA procedure because, as discussed earlier, it is no longer applicable. The Commission seeks further comments on this issue, including whether it would be appropriate to apply the test procedure in ASTM C 739–97 to mineral fiber.

iii. Stabilized Cellulose in Site-Built Attics

In the ANPR, the Commission acknowledged that, due to the manner in which stabilized cellulose insulation is installed, the BCS test procedure may not be appropriate for determining its long-term, settled density. 64 FR at 48033–34. The Commission did not agree with NAIMA, however, that the procedure for determining density in ASTM C 1149 is the appropriate measure of the long-term, settled density of stabilized cellulose insulations installed in attic applications. The Commission explained that ASTM C 1149 is designed for insulations that are sprayed onto walls, and able to support themselves as applied. Such insulations are most often applied to metal walls in commercial buildings, where they are left exposed. The Commission stated that when ASTM, or others, adopt a specific method for determining the long-term density of stabilized cellulose insulation for attic applications the Commission will consider whether to require its use. The Commission reminded manufacturers that, in the meantime, under section 5 of the FTC Act, they must have a reasonable basis for the density at which they conduct the R-value tests required by the Rule and for the R-value claims they make to consumers. 64 FR 48033.

Comments on Stabilized Cellulose Insulations for Use in Site-Built Home Attics

The Commission received one comment, from NAIMA, on the issue of stabilized cellulose insulations. NAIMA stated that there is little information on long-term thermal effectiveness and overall performance of wet-spray cellulose insulations, that no material specification exists to cover this product, and that there is no standard protocol for determining appropriate test density for labeling purposes. NAIMA reported that ongoing work on a proposed specification has relied on a drop box method under fixed laboratory conditions, but, in NAIMA's view, data has not been presented suggesting at what level of settlement a product is considered to be stabilized.

NAIMA further contended that the tests do not necessarily represent the material in actual field installations. NAIMA indicated that the product's settling and shrinkage varies with temperature and humidity and that data supports significant shrinkage at elevated temperatures and increased moisture levels. It is very difficult, in NAIMA's opinion, to maintain consistent density due to variations in the amount of water used when the product is installed, noting that many contractors say that they have no clear guidelines on drying of wet-spray cellulose. This is particularly significant in new construction where the wet spray insulation may not dry ''before the building is completed and the attic is closed up.'' NAIMA also stated that it was not aware of any testing conducted by the cellulose industry to provide consumers and installers with useful information and guidance on drying times. It advised the Commission, in light of what it characterized as ''this serious variable threatening to degrade the settled density of the cellulose insulation,'' to require each manufacturer to provide consumers and customers with reliable guidelines to ensure that the insulation has dried before construction is completed. NAIMA contended that this measure is particularly crucial because there is no approved test method for determining settled density. Pending the development of an accepted standard protocol (which it maintained the Commission should then require), NAIMA urged the Commission to require producers of stabilized cellulose to disclose to consumers and installers settlement and shrinkage data as a function of moisture application levels

[53] *See* 44 FR at 50228, 50239 n.239.

[54] NAIMA (9), pp. 1–14.

[55] CIMA (4), p. 3.

and provide a recommended temperature to guide installers in proper application.[56]

Discussion of Stabilized Insulations for Use in Site-Built Home Attics

Because there is no consensus standard to apply to the testing of stabilized cellulose, the Commission does not plan to prescribe one in the Rule. The Commission is proposing, however, to amend the Rule to clarify that industry members must take settling into account in making their R-value claims for stabilized insulation. The Commission notes that industry members must have a reasonable basis for their claims. It is generally accepted that some settling occurs with these materials. Even though there is no consensus standard for measuring it, manufacturers must take settling into account and use reliable tests to back up their claims. Finally, the Commission notes that if there is information, such as drying times, that are important to the proper installation of the material in question, manufacturers should disclose that information. The Commission seeks comment on this issue.

iv. Loose-fill and Stabilized Insulations Used in Manufactured Housing Attics

The Commission's ANPR also asked whether the procedures currently used to determine the settled density of dry-applied loose-fill insulations or stabilized insulations when they are used in attics of site-built homes, are appropriate for determining their settled density when they are used in attics of manufactured housing. At issue is whether these insulations, which are installed in attic assemblies in a factory and then transported to the site where the manufactured home will be located, settle more, or differently, from those used in site-built homes because of additional vibrations and other factors during transportation. The Commission solicited comments regarding the extent of settling of dry-applied loose-fill insulations and stabilized insulations when they are used in attics of manufactured housing, the density at which the R-value of these insulations should be determined for use in attics of manufactured housing, and how that density should be determined. 64 FR at 48033–34.

Comments on Dry-applied Loose-fill and Stabilized Insulations for Use in Manufactured Housing Attics

NAIMA urged the Commission to adopt testing guidelines similar to the Department of Housing and Urban Development Code and require over-the-road testing for all insulations installed in attics of manufactured homes. NAIMA doubted the accuracy of current methods used by the cellulose industry to judge the amount of settling of stabilized cellulose in attics of manufactured homes. NAIMA explained that the point of testing is the manufactured housing plant, before the fully constructed home is transported via truck or train to its final destination, and that the disturbances inherent in such transportation tend to alter the level of the cellulose, and thus its R-value.

According to NAIMA, rock wool and slag wool manufacturers rely for their claims on independently conducted third-party-witnessed over-the-road evaluations designed to measure the impact of the effects of transportation on installed rock wool and slag wool insulations. NAIMA contended that cellulose manufacturers did not conduct such over-the-road tests until 1997, when HUD required them to do so. NAIMA stated that, although CIMA has been working with HUD to resolve the issue, NAIMA cannot find evidence that CIMA and its members have rectified the alleged deficiencies in their testing approach to HUD's satisfaction. Accordingly, in NAIMA's view, the durability of thermal performance claims of stabilized cellulose in manufacturing home attics remains unsubstantiated.[57]

Discussion of Dry-applied Loose-fill and Stabilized Insulations for Use in Manufactured Housing Attics

The Commission does not propose to amend the Rule to address the particular settling issues associated with loose-fill and stabilized insulation in manufactured housing attics because, at this time, no industry consensus procedure exists. Nevertheless, the Commission reminds industry members that they must substantiate their product performance claims. Accordingly, all manufacturers of loose-fill and stabilized insulation in manufactured housing attics must take into account, as accurately as possible, any significant effects associated with transporting units from the manufacturing plant to the home site. The Commission's staff is aware that HUD has raised issues concerning these materials with industry members as part of that agency's regulatory program for manufactured housing. No specific HUD code or standard has been identified that would be appropriate for incorporation into the R-value Rule in this context.

b. Loose-Fill and Self-Supported Insulations in Walls

The ANPR explained that dry-applied loose-fill insulations and spray-applied, self-supported insulations can be installed in walls in residential applications. Dry-applied loose-fill insulations normally can only be applied in existing wall cavities (primarily in retrofit applications). If they are not sufficiently compressed during installation, these insulations may settle when blown into a confined area, such as an enclosed wall cavity, leaving a gap at the top of the wall cavity. Manufacturers who claim an R-value for a dry-applied loose-fill insulation must disclose the R-value at the applied density, determined according to the R-value test procedures specified in the Rule. The Rule, however, does not specify how manufacturers must determine that density in wall applications because there was no standard procedure for measuring the applied density for all product in that context when the Commission promulgated the Rule.

Self-supported, spray-applied insulations, mixed with water and adhesives, are installed pneumatically on-site by professional installers. They may be made of either cellulose or mineral fiber. When applied, this form of insulation requires no support other than the insulation itself or the substrate to which it is attached. These products most often are used in walls in commercial applications, where they may be left exposed after they are installed. They are rarely used in residences, primarily because this application requires the use of more insulation material for a given thickness (*i.e.*, the insulation is installed at a higher density and cost), often without any increase in total R-value, and sometimes at a reduced R-value. They are not used in attics because of their additional weight and cost. Because these products are applied at a greater density than either dry-applied loose-fill or stabilized insulations, they are not likely to settle.

The Commission explained that, although self-supported, spray applied insulation was not discussed during the original rulemaking proceeding and the Rule does not specify how R-value test specimens must be prepared, it is covered by the Rule if it is sold for use in the residential market. Because the density at which these insulations are applied affects their R-values, the Commission's staff has advised industry members that they should prepare test

[56] NAIMA (9), pp. 14–16.

[57] NAIMA (9), pp. 16–17.

specimens according to the manufacturer's installation instructions, using equipment, materials, and procedures representative of the manner in which the insulation is applied in the field. In the ANPR, the Commission indicated that the procedures in paragraph 5.1 of ASTM C 1149 (''Self-Supported Spray Applied Cellulosic Thermal Insulation'') appear to be appropriate for preparing R-value test specimens of self-supported, spray-applied cellulose insulation products. The Commission proposed to amend the Rule to incorporate this test and solicited comments on the proposal. 64 FR at 48034.

Comments on Loose-Fill Insulations in Walls

NAIMA suggested that the Rule require manufacturers to demonstrate that their products do not settle in wall installations or to disclose the amount of any expected settling on Fact Sheets along with wall coverage charts similar to those required for attic installations. NAIMA recommended that wall coverage charts require R-values, coverages, bag counts, and area weights at standard wall cavity depths for at least 2x4 and 2x6 framing. Acknowledging that no validated test method exists to predict the settling of loose-fill insulations, NAIMA nevertheless maintained that settling in walls is more critical than settling in attics because settling in walls creates uninsulated voids at the top of wall cavities, while settling in attics does not create uninsulated areas. NAIMA claimed that wall insulation settling of 5% can reduce overall wall R-value by 15%.[58]

Discussion of Loose-fill Insulation in Walls

The Commission understands that specific requirements for determining the appropriate density for the R-value test specimen and for disclosures on coverage charts for applications in enclosed wall cavities may provide some benefits to consumers. However, there does not appear to be any generally accepted procedure to determine the density of dry-applied loose-fill insulations when it is installed in enclosed wall cavities. Accordingly, at this time, the Commission is not proposing an amendment to the Rule in this regard, but reminds manufacturers to be careful and cautious about their claims for loose-fill insulation in walls.

[58] NAIMA (9), p. 17.

Comments on Self-Supported Insulation in Walls

NAIMA encouraged an amendment to the Rule that would require the preparation of R-value test specimens of self-supported spray cellulose according to ASTM C 1149–97. NAIMA maintained that this standard provides adequate test specimen procedures.[59]

Discussion of Self-Supported Insulation in Walls

For self-supported spray-applied cellulose insulation, the Commission proposes to amend the Rule to require the use of ASTM C 1149–97. The procedures in paragraph 5.1 of ASTM C 1149–97, which require that R-value test specimens be prepared using the manufacturer's recommended equipment and procedures and at the manufacturer's maximum recommended thickness, appear to be appropriate procedures for preparing R-value test specimens of self-supported, spray-applied cellulose insulation products. The Commission solicits comment regarding the accuracy and reliability of this procedure, how to define the products to which the procedures apply, and whether the same procedures (or others) should be required for other types of spray-applied insulations (*e.g.*, mineral fiber insulations) that are used in residential applications. If comments indicate that this product is rarely used in the residential market, the Commission will reconsider the need for a specific requirement. The Commission also proposes to indicate that manufacturers must take into account the settling of self-supported insulation in determining the R-value of their products. The Commission accordingly seeks comments regarding the extent to which this insulation is used in the residential market. If the material is not used widely in the residential market, the Commission requests views on whether it is necessary to amend the Rule to specifically address this product.

In the ANPR, the Commission also proposed the incorporation of a portion of HUD UM–80 into the Rule.[60] The HUD bulletin has not been reviewed or amended since its publication in 1979. To avoid any confusion that may result from requiring two procedures, the Commission does not propose to require HUD UM–80.

[59] *Id.*

[60] U.S. Department of Housing and Urban Development Materials Bulletin No. 80 (''HUD UM-80''), dated October 31, 1979.

Discussion regarding the Use of Loose-fill Insulations and Self-supported Insulations in Wall Cavities of Manufactured Housing

As indicated in the ANPR (64 FR at 48035), industry members have raised questions regarding the current procedures for determining the settled density of dry-applied loose-fill insulations or self-supported insulations when they are used in wall cavities of site-built homes. At issue is whether the settling of these insulations, which are installed in wall assemblies in a factory and then transported to the site where the manufactured home will be located, settle more, or differently, than those used in site-built homes because of additional vibrations and other factors during transportation. Because no comments addressed this issue, the Commission is not proposing any amendments to the Rule in this regard.

3. Density Variations

The ANPR asked whether the Rule should require R-value testing of loose-fill insulations at each thickness claimed in order to take into account the density variations that may occur with variations in thickness. 64 FR at 48035. NAIMA recommended that the Commission revise the Rule to require manufacturers to consider density variations in preparing coverage charts.[61] However, without specific data to demonstrate whether or how much the density of particular types of loose-fill varies with differences in thickness, the Commission does not believe that changes to the Rule on this issue would be appropriate. For this issue, the Commission is not proposing any amendments to the Rule.

4. Installations in Closed Cavities of Variable Thickness

The ANPR asked whether the Rule should specify how to determine and disclose R-values for insulation installed in cavities of variable thickness and density (*e.g.*, in manufactured housing attics). 64 FR at 48035. NAIMA opposed a change to the Rule because it would unnecessarily confuse this issue, and venture into system performance and building design.[62] No other significant comments were received on this issue. Accordingly, the Commission is not proposing any amendments to the Rule regarding this issue.

[61] NAIMA (9), p. 18.

[62] *Id.*

D. Other Testing Requirements

1. Accreditation of Testing Laboratories

The ANPR solicited comments on whether the Rule should require accreditation of testing laboratories that are used to substantiate R-value and related claims. 64 FR at 48035–36. The Commission received no comments in support of such a change, and the Commission has decided not to propose any amendments to the Rule regarding this issue.

2. Test Temperature Requirements

a. Mean Temperature

The ANPR asked whether the Rule should require a mean test temperature of other than 75° F for R-value tests. One commenter suggested that all products be tested with the cold side at 25° and the hot side at 75°.[63] Five other commenters, however, opposed any change to the Rule's mean temperature requirement.[64] NAIMA stated that the current requirement reflects the most appropriate mean temperature for comparison purposes. As explained in the ANPR, the 75° F mean temperature requirement is an appropriate uniform standard. 64 FR at 48036–37. The Commission believes that there is no compelling need to change the current requirement, and is not proposing any amendments to the Rule regarding this issue.

b. Temperature Differential

Background

The current Rule does not require the use of a specific temperature differential (*i.e.*, the difference in temperature between the hot and cold surface during testing) in conducting the test procedures dictated by section 460.5(a). The ANPR indicated that if evidence demonstrates that different test temperature differentials affect R-value results, then it may be appropriate to consider specifying a test temperature differential in the Rule to ensure the comparability of R-value claims for competing home insulation products. The Commission, therefore, solicited comments on whether, to what extent, and for what types and forms of insulation variations in the test temperature differential affect R-value results; and what specific test temperature differential(s) the Commission should impose for tests conducted according to each of the R-value test procedures cited in the Rule. 64 FR at 48037.

Comments

PIMA, FPSA, and NAIMA supported the adoption of a differential of 50° F plus or minus 10 degrees for tests at a mean temperature of 75° for all products, as specified in ASTM C 1058.[65] The Commission did not receive any comments opposing such a change.

Discussion

The Commission proposes to amend the Rule at section 460.5(a) to require that tests be conducted with a temperature differential of 50° F plus or minus 10° F. The Rule would continue to require a mean temperature of 75° F. The Commission believes that this amendment will help to ensure comparability of R-value claims for competing home insulations. The thermal properties of a specimen may change both with mean temperature and with the temperature difference across the test specimen. Data and information at standard temperatures are important for valid comparison of thermal properties. The Commission solicits comment on this proposal, including whether the proposed amendment generally is consistent with current industry practice.

3. Tolerance

Background

In the ANPR, the Commission proposed to clarify that the 10% tolerance provision in section 460.8 applies primarily to claims made by manufacturers and not to other sellers or installers who rely on R-value data provided by the manufacturer. The tolerance provision states that the actual R-value of any insulation sold to consumers cannot be more than 10 percent below the R-value shown on a label, fact sheet, ad, or other promotional material for the product. The Commission solicited comments on whether and how it should propose amending the tolerance provision, and the benefits and burdens such an amendment would confer on consumers and insulation sellers. In addition, the Commission sought comments on whether manufacturers currently use sampling procedures that do not result in the selection of test specimens that are representative of ongoing production; on which specific procedures are available for use in sampling from continuing production (or how sampling procedures designed for specific lots could be used to select samples from continuing production); and on whether the Commission should require the use of specific sampling procedures. 64 FR at 48037–38.

Comments

NAIMA supported amending the tolerance provision of the Rule to clarify that manufacturers are the only parties responsible for complying with the Rule's 10% tolerance provision.[66] PIMA indicated that the tolerance provision is well understood and that altering it could cause confusion.[67] T-Foil urged that the Commission eliminate the tolerance provision entirely because it misleads consumers.[68]

Other commenters, however, supported changes to the Rule to provide greater specificity for determining compliance with the 10% tolerance limit. Celotex, for example, suggested a requirement that manufacturers design products to meet 100% of claimed R-value for each thickness marketed.[69] NAIMA contended that the suggested wording in the ANPR offers clarity,[70] and would be likely to prevent misinterpretation of the 10% tolerance. NAIMA recommended adopting language that captures the following concepts: ''The product must always be produced to the label R-value. The R-value for any four randomly selected samples shall not be more than 5 percent below the listed R-value nor shall any single specimen be more than 10 percent below the listed R-value.''[71] According to NAIMA, this clarification would be consistent with ASTM C 665 and C 764, and would benefit consumers because there would be no room for misinterpretation of the 10% tolerance. In NAIMA's view, this approach also presents a greater probability that the product would be produced to the labeled R-value, and it would impose no burden on consumers or sellers.

On the issue of sampling procedures, most commenters did not support amending the Rule. PIMA argued that current manufacturer sampling and quality control procedures are sufficient and that changes to the Rule are unnecessary because manufacturers continuously test new and existing products for R-value because it is the

[63] Troutman/T-Foil (1).

[64] PIMA (3), p.11; FPSA (8), p.7; Elastizell (10), pp. 3–4; Tenneco (16), p.2; and NAIMA (9), p.19.

[65] PIMA (3), pp. 11–12, FPSA (8), p. 7, and NAIMA (9), pp. 19–20.

[66] PIMA (3), p. 12. and NAIMA (9), p. 20.

[67] PIMA (3), p. 12.

[68] T-Foil (1), p. 1.

[69] Celotex (7), p. 3.

[70] We assume that NAIMA refers to language suggested by DOW and quoted in the ANPR (64 FR at 48037): ''The mean R-value of sampled specimens of a production lot must meet or exceed the R-value shown in a label, fact sheet, ad or other promotional material. No individual specimen can have an R-value more than 10% below the claimed R-value.''

[71] NAIMA (9), p. 20.

most important property of insulation.[72] Celotex argued that a change in the Rule would be burdensome to manufacturers. Instead, it recommended that the Commission require that sampling techniques ''used to determine the Design R-value for an insulation must determine the average Design R-value for a full-size board unit.''[73] FPSA also did not support the addition of sampling procedures to the Rule.[74]

NAIMA agreed that no amendment to the Rule is warranted for sampling procedures. NAIMA stated that manufacturers generally test R-value every shift in the production process, and that this is certainly ''representative of ongoing production,'' so no specific sampling procedures should be required.[75]

T-Foil recommended that the Commission establish a complaint center for ASTM testing errors to prevent companies from ''shopping'' different labs for test results. T-Foil also recommended a disclosure on labels stating that actual values may differ up to 10% from the stated value, and specifying whether testing was done for summer or winter use (*i.e.*, direction of heat).[76]

Discussion

The Commission proposes to amend § 460.8 of the Rule to clarify that the tolerance limit applies to manufacturers and the manufacturing process (not to installation). The Rule will continue to require that professional installers and new home sellers apply loose-fill insulations according to the manufacturer's installation instructions. It also will continue to allow them to rely on the accuracy of the manufacturer's R-value and installation instructions, unless they have reason to believe that the instructions are inaccurate or not based on the proper tests. By specifying that the tolerance provision applies to manufacturers, the amendment would clarify that the tolerance is not intended to allow installers or new home sellers to deviate from the manufacturer's installation instructions. For instance, the 10% tolerance provision does not apply to the thickness at which loose-fill insulation is installed. Under the current Rule, loose-fill insulation must be installed at a settled thickness equal to or greater than the minimum settled thickness specified by the manufacturer.

The Commission also proposes to amend section 460.8 of the Rule to require that the mean R-value of sampled specimens of a production lot meet or exceed the R-value shown in a label, fact sheet, ad or other promotional material for that insulation. For the purposes of this amendment, the term ''production lot'' means a definite quantity of the product manufactured under uniform conditions of production. In addition, under the amendment, no individual specimen of that insulation may have an R-value more than 10% below the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation. The Commission believes that this change would clarify existing requirements and foster consistency in the application of the tolerance provision. While this procedure appears to be generally consistent with current industry practice and thus would not impose a significant burden, the Commission seeks comments regarding the impact that the amendment may cause.

The Commission is not proposing a specific sampling procedure. There does not seem to be any clear indication to suggest that manufacturers' implementation of the tolerance provision results in the selection of test specimens that are not representative of ongoing production. The Commission believes that continued flexibility in that area is appropriate.

4. Use of Current Test Data

Background

The ANPR considered whether current conditions would justify a requirement for a more specific retesting quality control mechanism. In this regard, the Commission solicited comments on how often manufacturers test their insulation products, how much the R-value of current production varies (for example, whether the R-value of the insulation being produced is consistently below the R-value claimed and previously determined, even if it is within the Rule's 10% tolerance), how frequently manufacturers change their products, whether they retest products that have changed, and what retesting schedule would be most appropriate to ensure the accuracy of R-value claims made to consumers.

Comments

NAIMA opposed adding requirements to the Rule related to test data. NAIMA maintained that, as a matter of practice, manufacturers should test their products much more frequently than every two or three years to insure compliance with the 10% R-value tolerance. NAIMA stated that some of its members measure their products' thermal resistance on a daily basis, while others check this attribute monthly. NAIMA contended that this type of testing should be conducted regularly as part of a company's quality-control procedure. According to NAIMA, the three-year test record retention period is sufficient. NAIMA further maintained that, when a manufacturer makes a significant change in a product, the product should undergo testing, and then the three-year cycle should begin again. NAIMA suggested that the Rule require thermal testing at least annually for all insulations covered by the Rule.[77]

Discussion

The ANPR noted that the Commission originally considered, but rejected, a staff recommendation to require manufacturers to repeat their R-value substantiation tests every 60 days because no single retesting frequency would be appropriate for all manufacturers, regardless of the type and amount of insulation they market. 64 FR at 48038. Instead, the Commission crafted the Rule to rely on a tolerance limit provision as the governing quality control mechanism, specifying 10% as the acceptable range of deviation, and requiring manufacturers to institute in-plant quality control procedures to stay within that tolerance. The Rule requires manufacturers to conduct a new R-value test on each new home insulation product, and to disclose the R-value (and related information) of each new product based on the new test. 64 FR at 48038. The Commission does not believe that existing practices justify the imposition of a new requirement for a specific retesting schedule. There is not enough information available to suggest that this issue constitutes a significant problem that warrants a new requirement in the Rule. Accordingly, the Commission is not proposing a Rule amendment in this area.

5. Determining the Thermal Performance of Reflective Insulations

a. Traditional Reflective Insulations

Background

There are two basic forms of reflective insulation products in the residential market: (1) traditional single-sheet and multi-sheet reflective insulations; and (2) single-sheet radiant barrier reflective insulations. Traditional reflective insulation products normally are

[72] PIMA (3), pp. 12–13.
[73] Celotex (7), p. 3.
[74] FPSA (8), pp. 6–7.
[75] NAIMA (9), p. 20.
[76] T-Foil (1), pp. 5–6.
[77] NAIMA (9), pp. 20–21.

installed in closed cavities, such as walls. Sections 460.5(b), (c), and (d) of the Rule require that manufacturers of traditional reflective insulation products use specific test procedures to determine the R-values of their products, and that manufacturers and other sellers disclose R-values to consumers for specific applications. 64 FR at 48038–39. Section 460.5(c) of the Rule requires the use of ASTM E 408 for single sheet systems. For reflective systems with more than one sheet, section 460.5(b) requires ASTM C 236 and ASTM C 976.

A relatively new ASTM procedure (ASTM C 1371–97, ''Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers'') can be used to measure the emissivity (*i.e.*, its power to radiate heat) of single-sheet reflective insulations. The ANPR solicited comments on this and other tests for single-sheet products, and asked whether it should require industry members to measure the emissivity by only one procedure to ensure that emissivity measurements are accurate and reliable.

The Commission indicated that it planned to amend the Rule to require that R-values for traditional multi-sheet reflective insulations be tested according to ASTM C 236–89 (1993) or ASTM C 976–90 in a test panel constructed according to ASTM C 1224–93, and under the test conditions specified in ASTM C 1224–93, and that the R-values be calculated according to the formula specified in ASTM C 1224–93 from the results of those R-value tests. *Id.* at 48039.

Comments

Most of the comments supported the Commission's proposed changes. For determining single sheet emissivity, PIMA supported C 1371 as discussed by the Commission and suggested that the Rule incorporate ASTM C 835.[78] NAIMA stated that ASTM E 408, which is currently required by the Rule, provides accurate emissivity results, but recommended that the sample tested reveal the effect of aging on the product's emissivity. NAIMA indicated that it would not oppose adoption of alternative tests so long as they were as accurate as E 408. It maintained that the proposed tests are necessary because the results reflect the impact of aging, dusting, and corrosion.[79]

PIMA supported the Commission's proposal for determining the R-value of multi-sheet reflective insulations.[80] AFS pointed out that ASTM C 1363, ''Test Method for Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus'' has replaced C 236, C 976, C 177, and C 518 mentioned currently in C 1224.[81] NAIMA further explained that ASTM C 1363 was developed to combine the requirements of ASTM C 236 and C 976 into a common test procedure. NAIMA indicated that any test apparatus meeting the existing C 236 and C 976 standards could meet the new standard. NAIMA also stated that ASTM C 1363 includes information from the applicable International Organization for Standardization (''ISO'') standard so that conforming to ASTM C 1363 also conforms to the ISO Hot Box standard.[82]

Discussion

To reflect new procedures as discussed above, the Commission proposes to amend the Rule to reorganize sections 460.5(b), (c), and (d) to require in proposed section 460.5(b) that single sheet systems of aluminum foil (*i.e.*, reflective material) be tested with ASTM C 1371–98, ''Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers'' or E 408 (as currently required). ASTM C 1371 tests the emissivity of the foil. To get the R-value for a specific emissivity level, air space, and direction of heat flow, the amendment would direct industry members to use the tables in the most recent edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' (''ASHRAE'') Handbook, if the product is intended for applications that meet the conditions specified in the tables. Industry members would have to use the R-value for 50° F , with a temperature differential of 30° F.

In proposed section 460.5(c), the Commission proposes to state that aluminum foil systems with more than one sheet, and single sheet systems of aluminum foil (*i.e.*, reflective insulation) that are intended for applications that do not meet the conditions specified in the tables in the most recent edition of the ASHRAE Handbook, must be tested with ASTM C 1363–97, ''Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus,'' in a test panel constructed according to ASTM C 1224–99, ''Standard Specification for Reflective Insulation for Building Applications,'' and under the test conditions specified in ASTM C 1224–99. To get the R-value from the results of those tests, the amendment would require the use of the formula specified in ASTM C 1224–99. The tests must be done at a mean temperature of 75° F , with a temperature differential of 30° F.

Finally, the Commission plans to amend section 460.5(d)(1) to insert a reference to ASTM C 1363–97, ''Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box,'' in place of ASTM C 236–89 (Reapproved 1993), ''Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box,'' and ASTM C 976–90, ''Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box.''

The Commission believes that these changes are appropriate because they account for recent improvements in the applicable test procedures. The Commission solicits comments on this proposal, particularly on any issues related to the accuracy, reliability, and consistency of the procedures for measuring emissivity; the costs of conducting the procedures; and whether the Commission should require that emissivity be measured by only one procedure to ensure that measurements of emissivity are accurate and reliable.

b. Radiant Barrier Products

Background

Radiant barrier reflective insulations are installed in attics facing the attic's open airspace. Although they are covered by the Rule, R-value claims are not appropriate for them because no generally accepted test procedure exists to determine the R-value of a radiant barrier reflective insulation installed in an open attic. Sellers who make energy-saving claims for radiant barrier insulations must nevertheless have a reasonable basis for the claims under section 460.19(a) of the Rule.

The ANPR noted that ASTM had issued a new standard—ASTM C 1340–96—for evaluating the thermal performance of low-emittance foils used in residential attics to reduce radiative transport across the attic air space. The Commission solicited comments concerning the specific type of performance for radiant barrier products that the standard measures; how the standard may be used to substantiate energy-saving or other performance claims for radiant barrier insulations; the types of installations of radiant

[78] PIMA (3), p. 7. ''Standard Test Method for Total Hemispherical Emittance of Surfaces From 20 to 1400 Degrees C'' (ATM C 835–95).

[79] NAIMA (9), p. 21.

[80] PIMA (3), p. 7.

[81] AFS (14), p. 1.

[82] NAIMA (9), pp. 21–22.

barrier insulations for which the standard may be used; the accuracy of the determinations made under the standard; and whether the Commission should require that energy-saving or other performance claims for radiant barrier insulations be based on the standard. 64 FR at 48039–40.

Comments

NAIMA asserted that the elusive quality of radiant barrier insulation's varying characteristics makes assigning an R-value rating nearly impossible. NAIMA stated that tests conducted at DOE and other labs demonstrate an ability to predict certain energy savings only when no variables interfere with the product's performance. Unfortunately, according to NAIMA, the DOE study shows that the product is vulnerable to numerous factors that can diminish its effectiveness. NAIMA contended that no single protocol or method currently exists that is capable of consistently rating the thermal performance of radiant barrier insulations. It maintained that, until such a test becomes available, the Commission should prohibit thermal performance claims for these products. NAIMA argued that such a restriction may provide an incentive for radiant barrier producers to develop the standard needed for supporting thermal performance claims.[83]

RIMA opposed adoption of ASTM C 1340–96. RIMA contended that, while the standard is a useful tool and a good starting point for calculating savings from radiant barriers, it does not account for the presence of air conditioning ducts in attics, which can significantly affect heat gain and overall savings. Without being specific, RIMA suggested that the Commission consider other programs that are more comprehensive in energy-saving determinations.[84]

Discussion

The Commission continues to find that R-value claims are not appropriate for radiant barrier reflective insulations because there is no generally accepted test procedure to determine the R-value of such insulations installed in an open attic or elsewhere. Sellers who make energy-saving claims for radiant barrier insulations, however, must have a reasonable basis for the claims under Section 460.19(a) of the Rule. It should be noted that ASTM C 1340–96 enables a determination of the heat flux through an attic containing a radiant barrier. The results do not provide an R-value rating, but do yield a performance value that may aid industry members in developing support for their energy-saving claims (and related performance claims) made about radiant barrier insulations. The Commission does not propose any amendments to the Rule on this subject.

6. Additional Laboratory Procedures for Testing Loose-Fill Insulations

The Rule currently specifies only the basic R-value test procedures and test specimen preparation procedures for certain products that are necessary to account for factors that can significantly affect R-value results (*e.g.*, aging, settling). The ANPR asked whether there is a need to specify in more detail the laboratory procedures that should be followed in preparing test specimens and conducting R-value test procedures. The Commission explained that ASTM C 687 (''Standard Practice for Determination of Thermal Resistance of Loose-Fill Building Insulation'') is a detailed standard practice, rather than a test procedure, and that it specifies procedures to be followed in testing a variety of loose-fill insulations for use in non-enclosed applications. The Commission considered it unnecessary to require adherence to more detailed standard practice or standard guide specifications, such as ASTM C 687. The Commission did not receive any comments in response to the ANPR supporting a requirement for detailed laboratory operating procedures for these insulations. Accordingly, the Commission is not proposing any amendments to the Rule.

E. Other Disclosure Issues

1. Disclosures on Labels and Fact Sheets

a. ''What You Should Know About R-values''

The ANPR sought comment on whether the Rule should require disclosure in fact sheets of additional or different information for consumers to consider when purchasing insulation. Several commenters suggested additional disclosures on fact sheets, including noting that R-values may decrease when insulation material is installed between structural members (*e.g.*, wall studs, floor joists, etc.),[85] information regarding the impact of long-term aging on material,[86] and disclosures regarding moisture content.[87] Both PIMA and NAIMA opposed changes to the Rule in this regard. PIMA stated that the inclusion of additional factors may create some confusion with consumers. NAIMA indicated that the current requirements are understandable to most consumers and that manufacturers are free to supplement required disclosures with additional fact sheets and materials.

The Commission understands that there are additional disclosures that could be added to fact sheets; however, we are not convinced that the additional burdens imposed by new disclosure requirements would be outweighed by increased consumer benefits. 64 FR at 48041. Thus, the Commission is not proposing any amendments to the Rule regarding this issue.

b. Disclosures for Batt, Blanket, and Boardstock Insulations

Background

Subsections 460.12(b)(1) and (b)(4) of the Rule require manufacturers to label all packages of ''mineral fiber batts and blankets'' and all board stock insulations with a chart showing the R-value, length, width, thickness, and square feet of insulation in the package, and section 460.13(c)(1) requires that they include the chart on the manufacturer fact sheets. As indicated in the ANPR, NAIMA recommended amending section 460.12(b)(1) to apply to *all* batt and blanket insulation products by deleting the reference to ''mineral fiber.'' NAIMA asserted that batts and blankets made of other materials, such as cotton, other cellulosic materials, and plastic fiber, have been introduced into the marketplace and that the Rule should specify labeling requirements for these new batt and blanket products. 64 FR at 48041.

Comments

In its ANPR comments, NAIMA reiterated its view indicating, among other things, that there is no valid argument to exempt any particular type of batt or blanket.[88] PIMA also supported deleting the phrase ''mineral fiber'' to ensure that all types of batt/blanket insulation are consistently covered.[89]

Discussion

The Commission agrees that all types of batt and blanket insulations should be labeled with the same basic R-value and coverage area information, and that manufacturers' fact sheets for these insulation products should include these disclosures. Section 460.12(b) refers to ''mineral fiber'' batts and blankets because, when the Rule was

[83] NAIMA (9), p. 22.

[84] RIMA (19), p. 1.

[85] Troutman/T-Foil, (1).

[86] FPSA (8), pp. 7–8.

[87] DOE (20), p.1.

[88] NAIMA (9), p. 23.

[89] PIMA (3), p. 7.

promulgated, the batt and blanket insulation products being sold in the residential market were mineral fiber insulation products, primarily fiberglass. The Commission, therefore, proposes deleting the phrase ''mineral fiber'' from section 460.12(b)(1) to clarify that the coverage chart disclosure requirement applies to all types of batt and blanket insulations, and solicits comments on this proposal.

The ANPR discussion of ''Disclosures for Batt, Blanket, and Boardstock Insulations'' included two other issues regarding whether the Rule should require: (1) manufacturers to mark unfaced batt/blanket insulations with R-value and require installers to apply the products so the marking is visible for post-installation inspections; and (2) disclosure, for batt/blanket and boardstock insulations, of ''nominal thickness'' instead of ''thickness'' (which implies exact thickness). The Commission continues to believe, as explained in the ANPR, that it is not necessary to require manufacturers to mark unfaced batt/blanket insulations with R-value and require installers to apply the products so the marking is visible for post-installation inspections. 62 FR 48043. The Commission did not receive any adverse comments on this view. Both NAIMA and PIMA supported an amendment that would require the disclosure of ''nominal thickness'' for batt/blanket and boardstock insulations instead of ''thickness.''[90] The Commission, however, does not believe this is needed since it is unclear whether such a change would provide a significant benefit to consumers. The Commission is not proposing any amendments to the Rule regarding these issues.

c. Required Disclosures for Loose-fill Insulations

i. R-value Disclosures

Background

Section 460.12(b) of the Rule requires that labels on loose-fill insulation packages disclose the minimum net weight of the insulation in the package and include a coverage chart disclosing minimum thickness (after settling), maximum net coverage area, minimum weight per square foot, and, for loose-fill cellulose insulation only, number of bags per 1,000 square feet for each of several specified total R-values for installation in open attics. The Rule currently specifies different total R-values for which the disclosures must be made for loose-fill cellulose insulations and other types of loose-fill insulations. To install an adequate amount of insulation, professional installers must calculate the number of square feet to be insulated and install the number of bags indicated on the manufacturer's coverage chart that are necessary for the desired R-value (commonly referred to as the ''bag count'').

In the ANPR, the Commission indicated that there is no longer any justification for requiring different disclosures for different types of loose-fill insulations for application in attics or other open areas, and proposed a single set of disclosure requirements for all types. The Commission solicited comments regarding this proposal, including the total R-values for which it would be most appropriate to require the disclosures, and whether the same disclosures should apply to both dry-applied loose-fill insulations and stabilized insulations.

Comments on R-value Disclosures:

The Commission received one comment on this issue. NAIMA fully supported requiring manufacturers of all loose-fill insulations to disclose minimum settled thickness, maximum net coverage area, and minimum weight per square foot at any R-value listed on the charts required for their products. NAIMA concurred with the Commission that there is no longer a justification for different disclosure requirements for different loose-fill insulations.[91]

Discussion of R-value Disclosures:

The Commission continues to believe that it would be appropriate to require the same disclosures for all types of loose-fill insulations for application in attics or other open areas.[92] The Commission believes that there no longer is any justification for these different disclosures, and accordingly proposes to amend sections 460.12(a)(2) and (3) to require the same coverage charts for all types of loose-fill insulation at R-values of 11, 13, 19, 22, 24, 32, and 40. The Commission solicits comments on this proposal, including comments addressing any additional compliance costs associated with the proposed change.

ii. ''Initial Installed Thickness''

Background

For loose-fill insulations, the Rule requires: (1) that each manufacturer determine the R-value of its home insulation product at settled density and construct coverage charts showing the minimum settled thickness, minimum weight per square foot, and coverage area per bag for various total R-values; and (2) that installers measure the area to be covered and install the number of bags (and weight of insulation material) indicated on the insulation product's coverage chart for the total R-value desired. These requirements have been necessary because the claimed total R-value for a specific dry-applied loose-fill insulation can be attained only when the requisite amount of insulation material in both thickness and density has been installed.

Comments

Two commenters addressed the issue of ''minimum thickness.'' The Insulation Contractors Association of America (''ICAA'') supported an amendment requiring a label disclosure of minimum initial installed thickness applicable to all types of loose-fill insulation, including dry-applied mineral fiber. ICAA indicated that a new test method, ASTM C 1374–97 (''Standard Test Method for Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation'') offers a reliable and uniform procedure to determine initial installed thickness levels (''minimum initially installed thickness'') for each total R-value claimed on the coverage charts for all loose-fill insulations, including dry-applied loose-fill mineral fiber insulations. ICAA contended that this information would help consumers achieve stated R-values by correct installation, and allow more accurate price comparisons. ICAA maintained that some manufacturers voluntarily include this information now, but that others do not.[93]

[90] PIMA (3), p. 13–14 and NAIMA (9), p.24.

[91] NAIMA (9), p. 24.

[92] As explained in the ANPR, the Commission originally prescribed separate disclosure requirements for loose-fill cellulose insulations and other types of loose-fill insulations (primarily mineral fiber loose-fill insulations) in response to requests that the Rule, where possible, apply labeling requirements consistent with GSA's purchasing specifications. GSA's specifications at that time required that labels for loose-fill cellulose insulation disclose the number of bags required to cover 1,000 square feet, but did not require this disclosure on labels for loose-fill mineral fiber insulation, and it required that the mandatory disclosures be made at different total R-values for the two types of loose-fill insulations. Consistent with the GSA specification, section 460.12(b)(2) of the Rule requires that the disclosures be made at R-values of 11, 19, and 22 for all loose-fill insulation except cellulose, and section 460.12(b)(3) requires the disclosures at R-values of 13, 19, 24, 32, and 40 for loose-fill cellulose insulation. After the Commission promulgated the Rule, GSA eliminated its own specifications and now uses ASTM material specifications for determining which insulation products may be purchased by the federal government (or in connection with programs operated by the federal government). *See* discussion at 64 FR at 48042.

[93] ICAA (5), pp. 3–4.

NAIMA recommended that the Commission require that dry-applied loose-fill cellulose bags include an installed thickness column that reflects the magnitude of settling and loss of thickness that can be expected.[94] In addition, NAIMA strongly opposed characterizing ''initial installed thickness'' or ''guaranteed thickness'' as the only qualities pertinent in determining whether the quantity of insulation blown in meets or exceeds labeled R-value.[95] NAIMA maintained that, due to inherent variability of the installation process for loose-fill insulations, the Rule's present requirements for the disclosure of minimum thickness should be retained. In NAIMA's view, the only practical way to ensure that the minimum, long-term thickness and weight per square foot are achieved is to be sure to install at least the minimum number of bags per 1,000 square feet as specified on the bag label coverage chart. The number of bags per 1,000 square feet is based upon net area, which is the total area minus the area covered by framing members and other obstructions, while job size is usually figured as total (or gross) area. Because the net area will always be smaller than the gross, the number of bags per 1,000 square foot of gross area may be reduced slightly, generally 3% to 8%, from the number on the label. NAIMA provides installation guidelines for professional installers. Contractors who follow these and other recommended practices deliver to their customers the appropriate R-value. NAIMA also suggested that references should not be made to R-value for a one-inch thickness because it would encourage consumers to multiply the one-inch R-value by the desired number of inches to attain the total R-value throughout the entire space even though but R-value per inch is not always constant.

Discussion

As discussed in the ANPR (64 FR at 48044), the ICAA has long taken the position that the current requirements of the Rule make it very difficult for installers to ensure that they have installed the correct amount of insulation. The requirement to use bag count (*i.e.*, the weight of insulation material installed) as the measure of their compliance with the Rule creates complications for the installer. ICAA contends that the reason for this problem is that the person applying loose-fill insulation through a blowing hose in the attic has no way of knowing at any given point how many bags have been loaded into the hopper of the blowing machine located in the truck outside. This may make it difficult to uniformly distribute within the attic the requisite number of bags for the job. In addition, ICAA has indicated in past comments that initial installed thickness information would help prevent their members from installing insulation only to the ''minimum thickness'' currently required on coverage charts. This ''minimum thickness'' information refers to the final settled thickness, not the material's thickness immediately after installation. ICAA believes that many installers mistakenly use this information for installation purposes and, as a result, provide inadequate amounts of material. 64 FR at 48043. In addition, the Commission recognizes that the Rule's bag count provisions require installers to make accurate attic measurements to determine the correct number of bags to use. It is possible that irregular attic configurations in many newer homes have made it more difficult to calculate accurate attic coverage areas.

The Commission recognizes that concerns persist about the installation of loose-fill. In some cases, installers fail to install sufficient insulation either because they apply material at the minimum settled thickness by mistake or they simply cheat consumers by providing inadequate amounts. In other instances, some installers inappropriately ''fluff'' their loose fill material by applying it with more air at a lower density. This practice increases thickness, at least initially, but reduces the density and total R-value. Under the current process, it is difficult for consumers to determine whether the correct insulation amount has been installed because they cannot rely on the installed thickness alone. Accordingly, the Commission believes that it is desirable to consider approaches that would allow consumers to determine, for themselves, whether adequate insulation has been installed. Requiring manufacturers to add a disclosure of ''initial installed thickness'' to coverage charts would address many of these problems.

In the past, the Commission has declined to require initial installed thickness on labels because there were no recognized procedures available to determine, on a uniform basis, a required initial thickness for all types of dry-applied loose-fill insulations. In addition, it has been unclear whether information about initial installed thickness, alone, would allow installers to provide the correct amount of material without having to count the number of bags they have installed or otherwise ensuring they have applied the required amount of insulation material.

As ICAA indicated in its ANPR comments,[96] a relatively new procedure, ASTM C 1374 (''Standard Test Method for Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation''), has been specifically developed to aid manufacturers in determining an initial installed thickness for their products. The Commission is now proposing to incorporate this procedure into the Rule and is seeking comments on whether this procedure will address the concerns that have been raised about loose-fill insulation. Specifically, the Commission is proposing to:

- Amend section 460.5(b) to add a new subsection (5) that would require manufacturers of loose-fill insulation to determine the initial installed thickness of their product at R-Values of 11, 13, 19, 24, 32, and 40 using ASTM C 1374–97 (''Standard Test Method for Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation'').
- Amend section 460.12 (Labels) to require this initial installed thickness information on product labels.
- Amend section 460.5(b) to require manufacturers of loose-fill insulation to determine the blowing machine adjustments and feed rates necessary to achieve the initial installed thicknesses and indicate such information on the product label.
- Amend section 460.17 to require installers to comply with the initial installed thickness directions on product labels and to use the blowing machine adjustments and feed rates specified by the manufacturer.

Under the proposal, manufacturers would provide initial installed thickness information on labels and fact sheets pursuant to sections 460.12 and 460.13. Pursuant to section 460.17, installers would have to follow the initial installed thickness information on the label to determine whether the appropriate amount of insulation has been installed. They also would have to follow the manufacturer's instructions for blowing machine settings. The Rule would continue to require installers to show fact sheets to consumers (section 460.15) and also provide the consumer with initial installed thickness and R-value information for specific jobs (section 460.17).

Under the Rule's current requirements, it is difficult for

[94] NAIMA (9), p. 13.

[95] NAIMA (9), pp. 25–26.

[96] ICAA (5).

consumers to verify for themselves that the correct amount of insulation has been installed. In addition to considering final settled thickness, they must perform calculations regarding coverage area and bag count to determine if the proper weight per square foot has been applied. The proposed initial installed thickness information should allow consumers, armed with a ruler, to determine whether the sufficient thickness of insulation has been installed. It should also provide installers with more straight-forward instructions for providing consumers with adequate amounts of insulation. In addition, the specific reference to initial installed thickness should reduce the probability that installers will mistakenly follow the settled thickness information on the labels in their initial application of material.[97]

Although we propose to add disclosure requirements for initial installed thickness information, the Commission does not propose to eliminate any of the existing disclosure requirements related to loose-fill such as bag count. Manufacturers would continue to provide information currently required on loose-fill labels such as minimum settled thickness, maximum new coverage area, number of bags per 1,000 square feet, and minimum weight per square foot at various R-values as general guidance for the installer and the consumer. Installers would continue to be required to disclose to customers the number of bags used and the coverage area. This information will provide consumers and inspectors with an additional means to verify that installers have provided an appropriate amount of material. It may discourage unscrupulous installers from intentionally altering the settings on blowing machines to ''fluff'' material (*i.e.*, increase thickness at the expense of density and total R-value). In addition, it is likely that most contractors would continue to need information about area and bag count for billing purposes.

The Rule would continue to require manufacturers of loose-fill cellulose insulation to conduct their R-value tests at the settled density using ASTM C 739–91 as specified by section 460.5(a)(2). Manufacturers of other loose-fill material also would have to continue to conduct R-value tests based on samples that fully reflect the effect of settling on the product's R-value (*see* § 460.5(a)(3)). Manufacturers would have to use this settling information in determining the initial installed thickness for their products.

The Commission has prepared the following questions to facilitate comment on this proposal. Commenters need not limit their comments to the issues raised by the questions:

- Would the information derived from ASTM C 1374 allow installers to provide the appropriate amount of insulation solely through the use of the manufacturer's specified blowing machine settings and the installation of the initial installed thickness specified on the bag label?
- Is ASTM C 1374 an appropriate procedure for determining the initial installed thickness for all loose-fill products?
- Are there other test procedures that should be incorporated into the Rule in lieu of (or in addition to) ASTM C 1374?
- Is it possible for manufacturers to provide information on labels about the appropriate blowing machine adjustments and feed rates required to achieve the initial installed thickness derived from ASTM C 1374?
- Should the Rule specify procedures that installers must follow to measure the thickness of the installed material? If so, what should those procedures be (*e.g.*, one measurement for every 100 square feet)?
- Is it possible for manufacturers to provide information on labels about the appropriate blowing machine adjustments and feed rates required to achieve the initial installed thickness derived from ASTM C 1374?
- Is there any specific rule language that would best achieve the proposal discussed here?
- Would incorporation of ASTM C 1374 significantly change the costs consumers would pay for loose-fill insulation? Are any increased costs offset by benefits?
- If installers follow initial installed thickness information for installation purposes, will it be difficult to provide consumers information on coverage area as required by the Rule? Will installers continue to measure coverage area to estimate the volume and cost associated with a particular job?

iii. Additional Loose-Fill Insulation Issues

In the ANPR, the section on ''Disclosures for Loose-fill Insulations'' included three other issues: (1) whether the Rule should require disclosure on packages of loose-fill insulations of ''net weight'' instead of ''minimum net weight;'' (2) whether the Rule should require manufacturers of loose-fill insulations to include unique tabs on packages and require installers to attach the tabs to consumer receipts to ensure installation of the proper amount of loose-fill insulations; and (3) whether the Rule should require manufacturers to include, in fact sheets, information on how consumers can verify the total R-value of loose-fill insulations installed in their attics.

The Commission did not receive any comments in support of a change to require disclosure of ''net weight'' instead of ''minimum net weight.'' NAIMA indicated that the use of unique tabs on packages of loose fill would provide a significant benefit to consumers and urged the Commission to impose such a requirement on a trial basis.[98] The Commission continues to believe that there is insufficient evidence to suggest that requiring the use of bag tabs would add materially to the benefits conferred by the Rule. Finally, the Commission does not propose to require manufacturers to include, in fact sheets, information on how consumers can verify the total R-value of loose-fill insulations installed in their attics. The installed thickness requirements proposed in this document combined with information already required by the Rule (*e.g.*, bag count, coverage area, and R-value) should provide consumers with adequate information. For these issues, the Commission is not proposing any amendments to the Rule.

d. Disclosures for Urea-based Foam Insulations

Background

In the original 1979 rulemaking proceeding, the Commission determined that the inherent qualities of urea-formaldehyde (''UF'') foam insulations, which were being installed at that time in wall cavities only by professional installers, would cause the products to lose volume or ''shrink.'' This shrinkage caused the insulation to pull away from the wall cavity after installation, leaving the wall partially uninsulated and resulting in a lower-than-claimed R-value.[99] To address this problem, the Rule requires that manufacturers disclose the product's R-value in a manner that accounts for the product's shrinkage, or include a specific disclosure about the effect of shrinkage on R-value (*see* section 460.13(d) for fact

[97] To improve the clarity of existing language in the Rule, the Commission may consider changing the term ''minimum thickness'' in § 460.12(b)(2) to ''minium settled thickness.'' The Commission seeks comment on such an amendment.

[98] NAIMA (9), p.26.

[99] Although both the rate and extent of shrinkage depended somewhat on the quality of the chemicals and the product's on-site formulation and application, even if a UF insulation product was installed perfectly, it would shrink and its R-value would decrease.

sheets and section 460.18(e) for insulation ads). 44 FR at 50220, 50231.

Earlier comments recommended that the Commission revise the statement to refer to ''*urea-based* foam insulation,'' because the reference to ''foam insulation'' implies that all foam-type insulation products (including other types of cellular plastics insulations) shrink after installation, resulting in lower R-values than claimed. One commenter stated that UF insulation is no longer sold, and that the disclosure requirement is unnecessary and may cause consumer confusion about other foam-type insulations. Because UF insulation is no longer sold, the Commission proposed to eliminate the provision altogether (64 FR at 48045).

Comments

In response to the ANPR, PIMA supported the Commission's proposal to delete required shrinkage disclosures for foam insulation, but recommended that the Commission include procedures to reinstate requirements if the product reappears on the market.[100] NAIMA also supported the proposal, indicating that it did not know of any UF insulation products still being sold or of any insulation products that may be subject to shrinkage.[101]

Discussion

Because it appears that UF foam insulation no longer is sold, the Commission proposes to delete the obsolete shrinkage disclosure requirements in §§ 460.13(d) and 460.18(e). The Commission solicits comments on this proposal and, in particular, information regarding the likelihood that UF foam insulation products may be sold again in the future. If a significant possibility exists, the Commission may decide to retain the disclosure requirement in the Rule but amend it to clarify that it applies only to urea-based foam insulation.

2. Disclosures in Advertising and Other Promotional Materials

a. Disclosures Required

In the ANPR, the Commission asked whether the Rule should be amended to delete the required R-value disclosure in advertisements and other promotional materials that contain triggering claims (*see* sections 460.19 and 460.18). One commenter urged the Commission to retain the requirement because it helps avoid confusion.[102] The Commission is not proposing any amendments to the Rule regarding this issue.

b. Advertising on Radio and Television

Background

The Rule as originally promulgated applied affirmative disclosure requirements to television advertisements as well as all other types of advertising and promotional materials (including radio). Unlike other types of advertising, which simply must include the required disclosures ''clearly and conspicuously,'' the Rule included very specific requirements regarding how required disclosures must be made in television advertising. Four insulation manufacturers appealed the disclosure requirements for television advertising, asserting that the requirements were particularly burdensome for short television ads. The Commission settled the appeal by agreeing not to impose disclosure requirements on television ads without conducting further rulemaking proceedings, and rescinded the requirements in 1986 without conducting further proceedings. No evidence was presented in the original rulemaking or in the appeal concerning any similar burdens that the disclosure requirements would impose on radio ads. In the ANPR, the Commission solicited comments on how the costs of making the required disclosures in radio ads compare to the benefits the disclosures provide to consumers. 64 FR at 48046.

Comments

NAIMA maintained that radio ads are similar to television ads because they both strive for pithy and concise messages and, since ads in both broadcast media are relatively expensive compared to those in other media, a disclosure requirement is particularly burdensome. NAIMA pointed out that television ads may provide printed disclosures without interrupting their oral or visual messages, which cannot be done on radio, so the impact of required disclosures is greater on radio ads than it is on television ads.

NAIMA suggested that the Commission amend the Rule to require that all radio and television ads for insulation products notify audiences that disclosure information required by the Federal Trade Commission may be obtained via a toll-free number. As an alternative, NAIMA suggested that the Commission amend the Rule to remove specific requirements for radio ad disclosures and instead allow radio and television ads simply to note that additional information is available that is relevant to buying decisions. A third alternative, according to NAIMA, would be to offer radio and television advertisers a significantly condensed version of the disclosure, such as ''Ask your seller for all the facts on R-values before making a purchase.'' NAIMA contended that this approach would allow for the full benefit of television and radio advertising while protecting consumers by notifying them about relevant information too lengthy for electronic media.[103] In contrast, PIMA did not support a change to the Rule in this regard.[104]

Discussion

The Commission proposes to eliminate current disclosure requirements for radio ads. Such an amendment would treat radio and television ads equally under the Rule. There is no indication that the absence of an affirmative disclosure requirement applicable to television ads has harmed consumers over the years. As NAIMA suggests, the lengthy disclosures required by sections 460.18 and 460.19 are arguably more burdensome for radio than television because the disclosures must necessarily displace significant portions of the ad's message or increase the duration of the ad and hence the advertiser's cost. Given the absence of any indication that consumers have been harmed because the Rule does not require disclosures in television ads, the Commission expects that the elimination of radio disclosure requirements will have little impact on consumers. Required information on fact sheets, labels, and print ads will continue to provide consumers with critical performance information when they shop for insulation or use installers. The absence of disclosures in radio ads is not likely to impact their buying decisions adversely. The Commission seeks comment on this proposal.

3. Disclosures by Installers or New Home Sellers

a. Fact Sheets

The Commission asked whether the Rule should require installers and new home sellers to give copies of manufacturers' fact sheets to consumers after purchase. The Rule already requires installers to show fact sheets to customers before customers agree to buy insulation. In addition, installers and new home sellers must provide insulation information to customers through receipts or contracts. In light of these existing requirements, the

[100] PIMA (3), p. 7.

[101] NAIMA (9), p. 27.

[102] *Id.*

[103] NAIMA (9), p. 27–8.

[104] PIMA (3), p. 14.

Commission believes that requiring these entities to provide copies of fact sheets after purchase would not provide significant benefits to consumers. 64 FR at 48046. Two commenters likewise opposed amending the Rule with regard to this issue.[105] Thus, the Commission is not proposing any amendments to the Rule regarding this issue.

b. Attic Cards and Certifications, and Attic Rulers

Background

The ANPR asked whether there is a need to amend the Rule to require the use of attic cards and attic rulers by installers.

Attic Cards and Certificates. Attic cards are usually posted in the attic near the access opening, for later reference by building code inspectors and homeowners. The ANPR explained that, in the original R-value rulemaking, the Commission determined that a requirement for attic cards was unnecessary in light of the Rule's requirement that new home sellers and retrofit installers give consumers written disclosures in contracts or written receipts. These documents provide the same information that would be disclosed on an attic card or certification. If the seller or consumer prefers, the contract or receipt can be posted in the form of an attic card after the seller has given the written disclosures to the consumer. Moreover, for insulations installed in attics of new residential construction, the CABO/MEC (Model Energy Code) requires that installers provide a signed and dated certification for the insulation installed in each part of the home, listing the type of insulation, the insulation manufacturer, and the total R-value, as well as other information, and post the certification in a conspicuous place. These requirements have been adopted in some form for use in federal government programs covering new residential construction and by 33 states. For these reasons, the Commission did not propose amending the Rule to require additional certification or the use of attic cards.

The Commission solicited comments, however, about (i) whether amending the Rule to require that disclosures be made in certifications or attic cards would provide benefits beyond those currently required by the Rule or the CABO/MEC for consumers or building inspectors, (ii) whether there currently are abuses in the sale and installation of home insulation that could be remedied by including these additional disclosure requirements in the Rule, and (iii) the costs to installers and new home sellers of providing the disclosures in certifications and attic cards. 64 FR at 48047.

Attic Rulers. Both the required density (and weight per square foot) and thickness of loose-fill and stabilized insulations must be installed to attain a specific R-value. The use of attic rulers could help installers apply a sufficient thickness to achieve a specific total R-value, and apply the insulation in a more level and consistent manner. However, installers would still have to ensure that they apply the required number of bags and weight of insulation material. The Commission suggested in the ANPR that the use of attic rulers could be particularly beneficial if manufacturers included a verified initial installed thickness disclosure or a guaranteed thickness disclosure on the bag label coverage chart. Attic rulers also could give consumers a ready means of determining, both initially and over time, whether the required minimum thickness has been installed.

The Commission pointed out that the CABO/MEC already requires, for new residential construction, that installers apply blown loose-fill or sprayed (*e.g.*, stabilized) insulations in attics with the use of thickness markers labeled in inches, attached to the trusses or joists at least every 300 square feet (28 m2), marked with the minimum initial installed thickness and minimum settled thickness, and installed facing the attic access. Because the CABO/MEC requires the use of attic rulers in new construction, the Commission did not propose amending the Rule to require their use. Nevertheless, the Commission solicited comments on this issue.

Comments

NAIMA suggests that the Commission mandate the use of CABO/MEC guidelines on attic cards, certificates, and rulers by including in the Rule the same language relied upon by these code bodies to encourage utilization of attic cards, rulers, and certificates. NAIMA states that not all jurisdictions are subject to CABO/MEC or any energy code. Further, unlike the Commission, which has responsibility to protect consumers and enforcement power, CABO/MEC owes no duty to act as consumers' guardian and is not empowered to wield the sword of enforcement and issue fines and penalties for failure to comply. Requiring use of attic rulers would deter installers who might consider cheating, which many believe is a widespread problem.[106]

Discussion

The Commission continues to believe that an amendment to the Rule to require attic cards and attic rulers is not warranted at this time. The Rule requirements already in place prohibit installers from engaging in practices that mislead consumers about the amount of insulation installed. The CABO/MEC attic card and ruler requirements augment the current provisions in the R-value rule by imposing additional requirements for new home construction in many jurisdictions. Although insulation added to existing homes is not covered by CABO/MEC, the Commission is not convinced that additional requirements will necessarily address the concerns raised. The existing requirements applicable to installers and new home sellers already make unlawful the practices that deny customers the proper amount of insulation. While additional disclosure requirements will increase the burden on those industry members that are already complying with the Rule, it is not clear that such changes will yield any greater deterrence to those companies that are violating the law by installing inadequate amounts of insulation.

A more direct solution to the problem may be, as the Commission is proposing, to require manufacturers to list an initial installed thickness column on their label that installers must in turn follow as the Commission is proposing. The Commission understands that there is continuing concern surrounding these issues. Therefore, the Commission solicits additional comments on these issues including whether there are other possible Rule changes that would provide additional deterrence against violations of the Rule with respect to the installation of loose-fill material.

c. Initial Installed Thickness

As discussed in detail in section V.E.1.c. above, the Commission proposes to amend § 460.17 to require loose-fill installers to comply with the initial installed thickness instructions provided by manufacturers on their labels. In addition, under this amendment, installers would have to comply with the manufacturers' instructions for blowing machine settings when loose-fill insulation is installed.

[105] PIMA (3), pp. 8, 14; NAIMA (9), p. 28.

[106] NAIMA (9), pp. 28–29.

4. Disclosures by Retailers

Background

Section 460.14 of the Rule requires retailers who sell insulation to do-it-yourself consumers to make the manufacturers' fact sheets available to consumers before purchase in any manner the retailer chooses, as long as consumers are likely to notice the fact sheets. The ANPR explained that the purpose of this requirement is to ensure that consumers have the information about home insulation they need to make cost-based purchasing decisions. When the Commission promulgated the Rule, bulky insulation packages were not normally available on the retail sales floor, so the consumer would not see the disclosures on labels before purchase. In addition, the fact sheets contain information about energy savings and other factors the consumer should consider when purchasing home insulation that is required on labels. 64 FR at 48048.

The ANPR solicited comments on whether the Rule should be amended to excuse retailers from making separate fact sheets available at the point of purchase *if* all the required fact sheet disclosures are made on the insulation package *and if* the insulation packages are available on the sales floor for the consumer to inspect before purchase. *Id.*

Comments

PIMA opposed the Commission's proposal. It indicated that retailers should continue to supply fact sheets or at least make them available to consumers at point of purchase. PIMA maintained that it is inappropriate as well as burdensome to require retailers to determine whether the labels adequately disclose information. PIMA asserted that retailers often open bundles or packages in order to sell individual boards, and packaging labels may be missing or damaged.[107]

NAIMA supported an amendment that would relieve retailers of responsibility to provide fact sheets when the same information is on the bag label. NAIMA recommended that the Commission add a provision requiring manufacturers to supply retailers with relevant fact sheets providing the facts omitted from the label in cases in which the labels lack the data required on fact sheets. NAIMA cautioned that, if such a requirement is not in the Rule, some manufacturers may see profit in limiting the amount of information disclosed to their customers.[108]

Discussion

In the years since the Commission promulgated the Rule, the nature of retail sales to do-it-yourself home insulation consumers has changed. Today, retailers often sell home insulation directly from warehouse-type sales floors where consumers select the packages of insulation they want. Therefore, the R-value and related information on the packages is available to consumers before purchase. In response to questions from retailers, the Commission's staff has advised informally that retailers need not make separate fact sheets available at the point of purchase *if* all the required fact sheet disclosures are made on the insulation package *and if* the insulation packages are available on the sales floor for the consumer to inspect prior to purchase. As it did in the ANPR, the Commission proposes to amend the Rule to codify this option. The Commission does not believe, as PIMA asserts, that this would impose an additional burden on retailers. The Commission believes that, to the contrary, this amendment would provide retailers with an additional option for ensuring that the appropriate information is available to consumers. In exercising this option, the retailers would have to ensure the labels contain the information provided on the fact sheets. If a retailer does not want to take the time to perform such a comparison, however, it can always use the fact sheets as provided now by the Rule. Retailers could exercise this option only if the package labels are in fact displayed in a way that customers can obtain the required information. As PIMA suggests, if package labels are discarded or damaged due to practices of the retailer, then the retailer would not be able to use this alternative and would have to make the fact sheets available to consumers. The Commission seeks comments on this proposal.

F. Amendments to Update References to ASTM Standards

In addition to the substantive amendments discussed herein, the Commission also proposes to amend certain provisions of the Rule in order to update those referenced ASTM Standards that have been reviewed and updated since the Rule was last amended in 1996. In section 460.5(a), the Commission proposes to update references to: ASTM C 177–85, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus'' (to C 177–97); ASTM C 518–91, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus'' (to C 518–98); ASTM C 1045–90, ''Standard Practice for Calculating Thermal Transmission Properties Under Steady-State Conditions'' (to C 1045–97); and ASTM C 1114–95, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus'' (to C 1114–98), to reflect the most recent versions of those standards. In 460.5(a)(2), the Commission proposes to update the reference to ASTM C 739–91, ''Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation'' (to C 739–97). Further, the Commission proposes to add a reference to ASTM C 1363–97, ''Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box,'' in place of ASTM C 236–89 (Reapproved 1993), ''Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box,'' and ASTM C 976–90, ''Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box'' in section 460.5(a) and, as discussed earlier, section 460.5(d)(1). The Commission also proposes to add new paragraph (e) in section 460.5 to consolidate information regarding incorporation by reference approvals by the Office of the **Federal Register**.

VI. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. Using expedited procedures will support the Commission's goals of clarifying existing regulations, when necessary, and eliminating obsolete or unnecessary regulation without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should amend the Rule. The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this document. These procedures include: (1) publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposals to amend the Rule; (3) holding an informal hearing (such as workshop), if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register.**

[107] PIMA (3), p. 8.

[108] NAIMA (9), p. 29.

VII. Requests for Public Hearings

Because written comments appear adequate to present the views of all interested parties, neither a public hearing nor a workshop has been scheduled. As stated earlier in this document, the Commission does not believe that a public workshop or hearing is needed to address the issues raised in this proposed rule. However, if any person would like to present views orally he or she should follow the procedures set forth in the **DATES** and **ADDRESSES** sections of this document.

VIII. Preliminary Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it (1) estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national economy, on the cost of home insulation products, or on covered parties or consumers. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Because the R-value Rule covers home insulation manufacturers and retailers, professional installers, new home sellers, and testing laboratories, the Commission believes that any amendments to the Rule may affect a substantial number of small businesses. Nevertheless, the proposed amendments would not appear to have a significant economic impact upon such entities. Specifically, the Commission is proposing only a few limited amendments that are designed to clarify the Rule, make disclosure requirements consistent for competing types of loose-fill insulation products as well as batt and blanket insulation products, require the most current procedures for preparing R-value test specimens and conducting R-value tests, provide consumers with information about the initial installed thickness of loose-fill insulation, delete disclosures for a type of insulation that no longer is sold, and provide retailers with an optional method for satisfying the Rule's fact sheet disclosure requirement. In the Commission's view, the proposed amendments should not have a significant or disproportionate impact on the costs of small manufacturers, retailers, installers, new home sellers, and testers of home insulation products.

Based on available information, therefore, the Commission certifies that amending the R-Value Rule as proposed will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

IX. Paperwork Reduction Act

The R-Value Rule contains various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Office of Management and Budget (''OMB'') Control Number 3084–0109.[109] As discussed in this document, the Commission is proposing a limited number of amendments that are designed to 1) clarify the Rule; 2) make disclosure requirements consistent for competing types of loose-fill insulation products and batt and blanket insulation products; 3) require the most current procedures for preparing R-value test specimens and conducting R-value tests; 4)improve installation instructions for loose-fill material; 5) delete disclosures for urea-based foam insulation, a type of insulation that no longer is sold; 6) delete mandatory disclosures for radio ads; and 7) provide retailers with an optional method for satisfying the Rule's fact sheet disclosure requirement. In the Commission's view, the proposed rule changes will not substantially or materially modify the collection of information and related burden estimates submitted to OMB when the Commission last sought renewed clearance for the Rule. See 67 FR 45734 (July 10, 2002).[110] To ensure that no significant paperwork burden is being overlooked, the Commission requests comments on this issue, and they should be faxed to OMB (Records Management Center, ATTN: Desk Officer for the FTC, OMB, Room 10102 NEOB, fax: 202/395-6566) and sent to the FTC Secretary at the address stated in the Addresses section of this document.

X. Additional Information for Interested Persons

1. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission.

2. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Commission Rule 1.18(c)(1), 16 CFR 1.18(c)(1), the Commission has determined that communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of ''Sunshine'' Meetings.[111]

XI. Invitation to Comment and Questions for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the R-value Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the costs and

[109] *See* 64 FR 36877 (July 8, 1999).

[110] The Commission received renewed clearance for the Rule on August 2, 2002.

[111] *See* 15 U.S.C. 57a(i)(2)(A); 45 FR 50814 (1980); 45 FR 78626 (1980).

benefits to industry members and consumers of each of the proposals, as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

The written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, 600 Pennsylvania Ave., N.W., Room 130, Washington, D.C. 20580, (202) 326–2222.

Questions

The Commission seeks comments on all proposed changes to the Rule indicated at the end of this document and listed in the section-by-section description at part IV of this document (above). The Commission has sought comments on a variety of issues discussed elsewhere in this document. In addition, the Commission seeks input on the following specific questions:

(1) Should the Commission amend section 460.5(a)(1) of the Rule to require the use of ASTM C 1303–95 for homogeneous, unfaced, rigid closed cell polyurethane, polyisocyanurate, and extruded polystyrene insulations? What market share do unfaced products hold relative to other rigid cellular insulations (such as faced products)? Does C 1303 adequately account for variations in the thickness of the insulations covered? What would be the cost of applying ASTM C 1303 as proposed by the Commission?

(2) Should the Commission require the use of ASTM C 1149 for determining the settled density of self-supported, spray applied cellulose insulation?

(3) Should the Commission amend sections 460.12(a)(2) and (3) to require the same coverage charts for all types of loose-fill insulation at R-values of 11, 13, 19, 22, 24, 32, and 40? Are there any additional, significant compliance costs associated with the proposed change?

(4) Should the Commission amend the testing and labeling provisions of the Rule to require the use of ASTM C–1374 for determining the initial installed thickness of loose-fill insulation (see section V.E.1.c.ii. for additional questions on this subject)?

(5) Are there additional changes to the Rule that have not been addressed the would help to ensure that installers apply the proper amount of insulation, particularly loose-fill?

(6) General Questions: To maximize the benefits and minimize the costs for consumers and sellers (including specifically small businesses), the Commission seeks views and data on the following general questions for all the proposed changes described in this document:

(a) What benefits would the proposed requirements confer, and on whom?

(b) What paperwork burdens would the proposed requirements impose, and on whom?

(c) What other costs or burdens would the proposed requirements impose, and on whom?

(d) What regulatory alternatives to the proposed requirements are available that would reduce the burdens of the proposed requirements, while providing the same benefits?

(e) What impact, either positive or negative, would the proposed requirements likely have on the environment?

List of Subjects in 16 CFR Part 460

Advertising, Insulation, Labeling, Reporting and recordkeeping requirements, Trade practices.

XII. Proposed Rule Language

For the reasons set out in the preamble, the Commission proposes to amend 16 CFR part 460 as follows:

PART 460—LABELING AND ADVERTISING OF HOME INSULATION

1. The authority citation for Part 460 continues to read as follows:

Authority: Authority: 38 Stat. 717, as amended (15 U.S.C. 41 *et seq.*).

2. Revise § 460.1 to read as follows:

§ 460.1 What this regulation does.

This regulation deals with home insulation labels, fact sheets, ads, and other promotional materials in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act. If you are covered by this regulation, breaking any of its rules is an unfair and deceptive act or practice or an unfair method of competition under section 5 of that Act. You can be fined heavily (up to $11,000 plus an adjustment for inflation, under § 1.98 of this chapter) each time you break a rule.

3. Revise § 460.5 to read as follows:

§ 460.5 R-value tests.

R-value measures resistance to heat flow. R-values given in labels, fact sheets, ads, or other promotional materials must be based on tests done under the methods listed below. They were designed by the American Society of Testing and Materials (ASTM). The test methods are:

(a) All types of insulation except aluminum foil must be tested with ASTM C 177–97, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus;'' ASTM C 518–98, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus;'' ASTM C 1363–97,''Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus'' or ASTM C 1114–98, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus.'' The tests must be done at a mean temperature of 75 degrees Fahrenheit and with a temperature differential of 50 degrees Fahrenheit plus or minus 10 degrees Fahrenheit. The tests must be done on the insulation material alone (excluding any airspace). R-values (''thermal resistance'') based upon heat flux measurements according to ASTM C 177–97 or ASTM C 518–98 must be reported only in accordance with the requirements and restrictions of ASTM C 1045–97, ''Standard Practice for Calculating Thermal Transmission Properties from Steady-State Heat Flux Measurements.''

(1) For polyurethane, polyisocyanurate, and extruded polystyrene, the tests must be done on samples that fully reflect the effect of aging on the product's R-value. To age a sample of polyurethane, polyisocyanurate, or extruded polystyrene insulation, follow, where applicable, ASTM C 578–95, ''Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation,'' ASTM C 1029–96, ''Standard Specification for Spray-Applied Rigid Cellular Polyurethane Thermal Insulation,'' and ASTM C 591–94, ''Standard Specification for Unfaced Preformed Rigid Cellular Polyisocyanurate Thermal Insulation.'' If these tests are not applicable to your product, you must follow the procedure in paragraph 4.6.4 of GSA Specification HH–I–530A or another reliable procedure.

(2) For loose-fill cellulose, the tests must be done at the settled density determined under paragraph 8 of ASTM C 739–97, ''Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation.''

(3) For loose-fill mineral wool, self-supported, spray-applied cellulose, and stabilized cellulose, the tests must be done on samples that fully reflect the effect of settling on the product's R-value.

(4) For self-supported spray-applied cellulose, the tests must be done at the settled density determined pursuant to ASTM C 1149–97, ''Standard Specification for Self-Supported Spray Applied Cellulosic Thermal Insulation.''

(5) For loose-fill insulations, the initial installed thickness for the product must be determined pursuant to ASTM C 1374–97, ''Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation,'' for R-values of 11, 13, 19, 22, 24, 32, 40 and any other R-values provided on the product's label pursuant to § 460.12.

(b) Single sheet systems of aluminum foil must be tested with ASTM E 408–71 (Reapproved 1996), ''Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection-Meter Techniques,'' or ASTM C 1371–98, ''Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers.'' This tests the emissivity of the foil—its power to radiate heat. To get the R-value for a specific emissivity level, air space, and direction of heat flow, use the tables in the most recent edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' (ASHRAE) Fundamentals Handbook, if the product is intended for applications that meet the conditions specified in the tables. You must use the R-value shown for 50 degrees Fahrenheit, with a temperature differential of 30 degrees Fahrenheit.

(c) Aluminum foil systems with more than one sheet, and single sheet systems of aluminum foil that are intended for applications that do not meet the conditions specified in the tables in the most recent edition of the ASHRAE Fundamentals Handbook, must be tested with ASTM C 1363–97, ''Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus,'' in a test panel constructed according to ASTM C 1224–99, ''Standard Specification for Reflective Insulation for Building Applications,'' and under the test conditions specified in ASTM C 1224–99. To get the R-value from the results of those tests, use the formula specified in ASTM C 1224–99.

(d) For insulation materials with foil facings, you must test the R-value of the material alone (excluding any air spaces) under the methods listed in paragraph (a) of this section. You can also determine the R-value of the material in conjunction with an air space. You can use one of two methods to do this:

(1) You can test the system, with its air space, under ASTM C 1363–97, ''Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus,'' which is incorporated by reference in paragraph (a) of this section. If you do this, you must follow the rules in paragraph (a) of this section on temperature, aging and settled density.

(2) You can add up the tested R-value of the material and the R-value of the air space. To get the R-value for the air space, you must follow the rules in paragraph (b) of this section.

(e) The standards listed above are incorporated by reference into this section. These standards were 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 inspected at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC. Copies of materials and standards incorporated by reference may be obtained from the issuing organizations listed in this section.

(1) The American Society of Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(i) ASTM C 177–97 (Reapproved 1993), ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus.''

(ii) ASTM C 236–89 (Reapproved 1993), ''Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box.''

(iii) ASTM C 518–95, ''Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus.''

(iv) ASTM C 578–95, ''Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation.''

(v) ASTM C 591–94, ''Standard Specification for Unfaced Preformed Rigid Cellular Polyisocyanurate Thermal Insulation.''

(vi) ASTM C 739–97, ''Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation.''

(vii) ASTM C 1029–96, ''Standard Specification for Spray-Applied Rigid Cellular Polyurethane Thermal Insulation.''

(viii) ASTM C 1045–97, ''Standard Practice for Calculating Thermal Transmission Properties from Steady-State Heat Flux Measurements.''

(ix) ASTM C 1114–98, ''Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus.''

(x) ASTM C 1149–97, ''Standard Specification for Self-Supported Spray Applied Cellulosic Thermal Insulation.''

(xi) ASTM C 1224–99, ''Standard Specification for Reflective Insulation for Building Applications.''

(xii) ASTM C 1363–97,''Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus.''

(xiii) ASTM C 1371–98, ''Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers.''

(xiv) ASTM C 1374–97, ''Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation.''

(xv) ASTM E 408–71 (Reapproved 1996), ''Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection-Meter Techniques.''

(2) The American Society of Heating, Refrigerating, and Air-Conditioning Engineers' (ASHRAE), 1791 Tullie Circle, N.E., Atlanta, Georgia 30329. ASHRAE Fundamentals Handbook (2001 edition).

(3) U.S. General Services Administration (GSA),1800 F Street, NW Washington, DC 20405. GSA Specification HH-I–530A.

4. Revise § 460.8 to read as follows:

§ 460.8 R-value tolerances.

If you are a manufacturer of home insulation, the mean R-value of sampled specimens of a production lot of insulation you sell must meet or exceed the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation. A production lot for the purposes of this section means a definite quantity of the product manufactured under uniform conditions of production. No individual specimen of the insulation you sell can have an R-value more than 10% below the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation. If you are not a manufacturer, you can rely on the R-value data given to you by the manufacturer, unless you know or should know that the data is false or not based on the proper tests.

5. Revise § 460.12 to read as follows:

§ 460.12 Labels.

If you are a manufacturer, you must label all packages of your insulation. The labels must contain:

(a) The type of insulation.

(b) A chart showing these items:

(1) For batts and blankets of any type: the R-value, length, width, thickness, and square feet of insulation in the package.

(2) For all loose-fill insulation: The minimum settled thickness, initial installed thickness, maximum net coverage area, number of bags per 1,000 square feet, and minimum weight per square foot at R-values of 11, 13, 19, 22, 24, 32 and 40. You must also give this information for any additional R-values you list on the chart. Labels for these products must state the minimum net weight of the insulation in the package. You must also provide the appropriate blowing machine settings necessary to achieve the initial installed thicknesses listed on your label.

(3) For boardstock: the R-value, length, width, and thickness of the boards in the package, and the square feet of insulation in the package.

(4) For aluminum foil: the number of foil sheets; the number and thickness of the air spaces; and the R-value provided by that system when the direction of heat flow is up, down, and horizontal. You can show the R-value for only one direction of heat flow if you clearly and conspicuously state that the foil can only be used in that application.

(5) For insulation materials with foil facings, you must follow the rule that applies to the material itself. For example, if you manufacture boardstock with a foil facing, follow paragraph (b)(3) of this section. You can also show the R-value of the insulation when it is installed in conjunction with an air space. This is its ''system R-value.'' If you do this, you must clearly and conspicuously state the conditions under which the system R-value can be attained.

(6) For air duct insulation: The R-value, length, width, thickness, and square feet of insulation in the package.

(c) The following statement: ''R means resistance to heat flow. The higher the R-value, the greater the insulating power.''

(d) If installation instructions are included on the label or with the package, add this statement: ''To get the marked R-value, it is essential that this insulation be installed properly. If you do it yourself, follow the instructions carefully.''

(e) If no instructions are included, add this statement: ''To get the marked R-value, it is essential that this insulation be installed properly. If you do it yourself, get instructions and follow them carefully. Instructions do not come with this package.''

6. In § 460.13, remove paragraph (d) and redesignate paragraphs (e) and (f) as paragraphs (d) and (e) respectively.

7. Revise § 460.14 to read as follows:

§ 460.14 How retailers must handle fact sheets.

If you sell insulation to do-it-yourself customers, you must have fact sheets for the insulation products you sell. You must make the fact sheets available to your customers. You can decide how to do this, as long as your insulation customers are likely to notice them. For example, you can put them in a display, and let customers take copies of them. You can keep them in a binder at a counter or service desk, and have a sign telling customers where the fact sheets are. You need not make the fact sheets available to customers if you display insulation packages on the sales floor where your insulation customers are likely to notice them and each individual insulation package offered for sale contains all package label and fact sheet disclosures required by § § 460.12 and 460.13.

8. Section 460.17 is revised to read as follows:

§ 460.17 What installers must tell their customers.

If you are an installer, you must give your customers a contract or receipt for the insulation you install. For all insulation except loose-fill and aluminum foil, the receipt must show the coverage area, thickness, and R-value of the insulation you installed. The receipt must be dated and signed by the installer. To figure out the R-value of the insulation, use the data that the manufacturer gives you. If you put insulation in more than one part of the house, put the data for each part on the receipt. You can do this on one receipt, as long as you do not add up the coverage areas or R-values for different parts of the house. Do not multiply the R-value for one inch by the number of inches you installed. For loose-fill, you must follow the manufacturer's label instructions for initial installed thickness and blowing machine settings. For loose-fill, the receipt must show the coverage area, initial installed thickness, R-value, and the number of bags used. For aluminum foil, the receipt must show the number and thickness of the air spaces, the direction of heat flow, and the R-value.

9. In § 460.18, paragraph (e) is removed, and paragraph (f) is redesignated as paragraph (e) and revised to read as follows:

§ 460.18 Insulation ads.

* * * * *

(e) The affirmative disclosure requirements in § 460.18 do not apply to ads on television or radio.

10. In § 460.19, paragraph (g) is revised to read as follows:

§ 460.19 Savings claims.

* * * * *

(g) The affirmative disclosure requirements in § 460.19 do not apply to ads on television or radio.

11. In § 460.23, paragraph (a) is revised to read as follows:

§ 460.23 Other laws, rules, and orders.

(a) If an outstanding FTC Cease and Desist Order applies to you but differs from the rules given here, you can petition to amend the order.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary of the Commission.

[FR Doc. 03–17854 Filed 7–14–03; 8:45 am]

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