AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

12–16–03 Tuesday
Vol. 68 No. 241 Dec. 16, 2003

Pages 69941–70120

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *http://www.nara.gov/fedreg.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.access.gpo.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via email at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 40% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, *bookstore@gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 68 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 68, No. 241

Tuesday, December 16, 2003

Agency for Healthcare Research and Quality
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70016–70017

Agricultural Marketing Service
RULES
Commodity laboratory testing programs:
Cottonseed chemist licensing program, CFR part removed; commodity testing laboratory and office addresses updated; and information symbols adopted, 69944–69948
Fresh fruits, vegetables, and other products; inspection and certification:
Fees and charges increase, 69941–69944
Soybean promotion, research, and consumer information:
Small soybean producing States and regions; assessments reporting requirements, 69953–69954
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 69983–69984
Mangos; grade standards, 69984

Agriculture Department
See Agricultural Marketing Service
See Farm Service Agency
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panels, 70018

Coast Guard
RULES
Notice of Violation Program; policy revison, 69958
Ports and waterways safety:
Eighth Coast Guard District inland rivers; barges loaded with dangerous cargoes; reporting requirements; regulated navigation area, 69958–69959

Commerce Department
See Economic Analysis Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Copyright Office, Library of Congress
NOTICES
Courier mail; new delivery procedures for non-government, in-person, commercial couriers and messengers, 70039

Council on Environmental Quality
NOTICES
Meetings:
National Environmental Policy Act Task Force, 70013–70014

Economic Analysis Bureau
RULES
International services survey:
BE-85; financial services transactions between U.S. financial services providers and unaffiliated foreign persons; quarterly survey, 69955–69957

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70007–70008
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Developing Hispanic-Serving Institutions Program, 70008

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70037–70039

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Rocky Flats, CO, 70008
Patent license; non-exclusive, exclusive, or partially exclusive:
Powerspan Corp., 70009

Environmental Protection Agency
PROPOSED RULES
Air quality planning purposes; designation of areas:
Various States, 70107–70119
NOTICES
Air programs:
State implementation plans; adequacy status for transportation conformity purposes—
District of Columbia, Virginia, and Maryland, 70012
Reports and guidance documents; availability, etc.:
U.S.-Mexico Border 2012 Program, 70012–70013

Environmental Quality Council
See Council on Environmental Quality

Executive Office of the President
See Council on Environmental Quality

Farm Service Agency
RULES
Program regulations:
Minor Program loans, 69948–69952
Servicing and collections—
Prompt disaster set-aside consideration and primary loan servicing facilitation; correction, 69954–69955

Federal Communications Commission
NOTICES
Applications, hearings, determinations, etc.:
Scaggs, Roger Thomas, 70014–70015

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 70015

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arkansas, 69961–69962
Various States, 69959–69961
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70025–70026

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Hydroelectric licensing regulations
Correction, 69957
NOTICES
Electric rate and corporate regulation filings:
RWE Trading Americas Inc., et al., 70009–70011

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 70015
Permissible nonbanking activities, 70015

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Elbert County, CO; Preble's meadow jumping mouse, 70027–70028

Food and Drug Administration
RULES
Public Health Security and Bioterroism Preparedness and Response Act of 2002:
Food importation notice to FDA; industry guidance availability, 69957–69958
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70019–70021

Forest Service
NOTICES
Environmental statements; notice of intent:
Deschutes National Forest, OR, 69984–69985
Meetings:
Resource Advisory Committees—
Modoc County, 69985–69986
Reports and guidance documents; availability, etc.:
Forest transportation system analysis; road management policy; revisions, 69986

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Blood Safety and Availability Advisory Committee, 70015–70016
Reports and guidance documents; availability, etc.:
National origin discrimination as it affects limited English proficient persons; prohibition; policy guidance to Federal financial assistance recipients, 70016

Health Resources and Services Administration
RULES
Smallpox Compensation Program:
Implementation, 70079–70106

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 70025

Interior Department
See Fish and Wildlife Service
See Minerals Management Service
See National Indian Gaming Commission
See National Park Service
NOTICES
Committees; establishment, renewal, termination, etc.:
Invasive Species Advisory Committee
Republication, 70026–70027

International Trade Administration
NOTICES
Antidumping:
Circular welded carbon steel pipe and tubes from—
Taiwan, 69987
Electrolytic manganese dioxide from—
Various countries, 69987
Honey from—
China, 69988–69994
Low enriched uranium from—
France, 69994–69995
Stainless steel butt-weld pipe fittings from—
Korea, 69995–69996
Taiwan, 69996–69998
Stainless steel plate in coils from—
Taiwan, 69998–70000

International Trade Commission
NOTICES
Import investigations:
Recordable and rewritable compact discs, 70036–70037

James Madison Memorial Fellowship Foundation
PROPOSED RULES
Fellowship program requirements, 69980–69982

Labor Department
See Employment Standards Administration

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
NOTICES
Environmental statements; notice of intent:
Alaska OCS—
Oil and gas lease sales, 70028–70030

National Aeronautics and Space Administration
NOTICES
Reports and guidance documents; availability, etc.:
National origin discrimination as it affects limited English proficient persons; prohibition; policy guidance to Federal financial assistance recipients, 70039–70048

National Indian Gaming Commission
NOTICES
Indian Gaming Regulatory Act:
Approved class III gaming ordinances; list, 70048–70049

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 70021
National Institute of Allergy and Infectious Diseases, 70022
National Institute of Environmental Health Sciences, 70021–70022
Scientific Review Center, 70022–70024

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 69974–69977
Atlantic highly migratory species—
Atlantic bluefin tuna, 69969–69970
Northeastern United States fisheries—
Atlantic surfclam and ocean quahog, 69970–69974
Marine mammals:
Commercial fishing operations; incidental taking—
Atlantic Large Whale Take Reduction Plan, 69967–69969
Incidental taking—
Southern California; drift gillnet fishing prohibition; loggerhead sea turtles, 69962–69967
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Lamont-Doherty Earth Observatory; northern Yucatan Peninsula, Gulf of Mexico; cetaceans and pinnipeds, 70000–70005

National Park Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70030–70031
Environmental statements; availability, etc.:
Glacier Bay National Park and Preserve, AK, 70031–70033
Star-Spangled Banner National Historic Trail, MD, DC, and VA, 70033
National Register of Historic Places:
Pending nominations, 70033–70036

National Science Foundation
NOTICES
Meetings:
Small Business Industrial Innovation Advisory Committee, 70049

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Virginia Electric & Power Co., 70050–70051
Meetings; Sunshine Act, 70051
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 70049–70050
Southern Nuclear Operating Co., Inc.; correction, 70050

Patent and Trademark Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70005–70007

Rural Business-Cooperative Service
RULES
Program regulations:
Minor Program loans, 69948–69952
Servicing and collections—
Prompt disaster set-aside consideration and primary loan servicing facilitation; correction, 69954–69955

Rural Housing Service
RULES
Program regulations:
Minor Program loans, 69948–69952
Servicing and collections—
Prompt disaster set-aside consideration and primary loan servicing facilitation; correction, 69954–69955

Rural Utilities Service
RULES
Program regulations:
Minor Program loans, 69948–69952
Servicing and collections—
Prompt disaster set-aside consideration and primary loan servicing facilitation; correction, 69954–69955

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70051–70052
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 70053–70057
Depository Trust Co., 70057–70058
International Securities Exchange, Inc., 70058–70059
National Association of Securities Dealers, Inc., 70059–70070
Pacific Exchange, Inc., 70070–70072
Philadelphia Stock Exchange, Inc., 70072–70075
Applications, hearings, determinations, etc.:
Bexil Corp., 70052–70053

Small Business Administration
NOTICES
Applications, hearings, determinations, etc.:
CVP SBIC, L.P., 70075

Social Security Administration
PROPOSED RULES
Organization and procedures:
Social Security numbers assignment to foreign academic students in F-1 status, 69978–69980

State Department
NOTICES
Art objects; importation for exhibition:
Arcadia and Metropolis: Masterworks from the Neue Nationalgalerie Berlin, 70075
Glory of Baroque Dresden Exhibition, 70075

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70024–70025

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.: Union Pacific Railroad Co. et al., 70076

Thrift Supervision Office
NOTICES
Check processing system; electronic fund transfer conversion, 70076–70077

Transportation Department
See Surface Transportation Board

Treasury Department
See Thrift Supervision Office
See United States Mint

United States Mint
NOTICES
Artistic Infusion Program; call for artists, 70077

Separate Parts In This Issue

Part II
Health and Human Services Department, Health Resources and Services Administration, 70079–70106

Part III
Environmental Protection Agency, 70107–70119

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
51.....69941
91.....69944
96.....69944
772.....69948
1220.....69953
1901.....69948
1951 (2 documents) 69948, 69954

15 CFR
801.....69955

18 CFR
4.....69957
5.....69957

20 CFR
Proposed Rules:
422.....69978

21 CFR
1.....69957

33 CFR
1.....69958
165.....69958

40 CFR
Proposed Rules:
81.....70108

42 CFR
102.....70080

44 CFR
65.....69959
67.....69961

45 CFR
Proposed Rules:
2400.....69980

50 CFR
223.....69962
229.....69967
635.....69969
648.....69970
679.....69974

Rules and Regulations

Federal Register

Vol. 68, No. 241

Tuesday, December 16, 2003

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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–03–301]

RIN 0581–AB63

Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 15 percent certain fees charged for the inspection of these products at destination markets. The fees for inspecting multiple lots of the same product during inspections will be increased from $14.00 to $45.00, and the per package fees for dock-side inspections will be changed from a three interval schedule, based on weight, to a two interval schedule based on different weight thresholds. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946 (AMA of 1946). The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under section 1308 of the Farm Security and Rural Investigation Act of 2002.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Rita Bibbs-Booth, USDA, 1400 Independence Ave., SW., Room 0640–S, Washington, DC 20250–0295, or call (202) 720–0391.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be ''non-significant'' for the purposes of Executive Order 12866. Therefore, it has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has proposed this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The action described herein is being taken for several reasons, including that additional user fee revenues are needed to cover the costs of: (1) Providing current program operations and services; (2) improving the timeliness with which inspection services are provided; and (3) improving the work environment.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The Fresh Products Branch (FPB) has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. However, even with these efforts, FPB's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for FPB's destination market inspection work during FY–03 are $12.0 million with costs projected at $18.3 million and an end-of-year reserve of $14.8 million. However, this reserve balance is due to appropriated funding received in October 2001, for infrastructure, workplace, and technological improvements. FPB's costs of operating the destination market program are expected to increase to approximately $18.9 million during FY–04 and to approximately $19.4 million during FY–05. The current fee structure with the infusion of the appropriated funding is expected to fund the terminal market inspection services until FY–2006, when FPB will fall below the Agency's mandated four-month reserve level.

This fee increase should result in an estimated $1.8 million in additional revenues per year (effective in FY 04, if the fees are implemented by October 1, 2003). This will not cover all of FPB's costs. FPB will need to continue to increase fees bi-yearly in order to cover the program's operating cost and maintain the required reserve balance. FPB believes that increasing fees incrementally is appropriate at this time. Additional fee increases beyond FY–2004 will be needed to sustain the program in the future.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 4.02 to 4.87 percent depending on locality, effective January 2003, has significantly increased program costs. This salary adjustment will increase FPB's costs by over $700,000 per year. Increases in health and life insurance premiums, along with workers compensation will also increase program costs. Since FPB's last fee increase, many employees have converted to or were hired under the Federal Employees Retirement System (FERS), which has also contributed to the increase in program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional funds of approximately $155,000 are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began in 2001, developing (with appropriated funds) an automated system recently named the Fresh Electronic Inspection Reporting/Resource System (FEIRS) to replace its manual paper and pen inspection reporting process. Approximately $200,000 in additional funds are needed to complete the development and deployment of FEIRS, and it will take approximately $10,000 per month to maintain the system. This system has been put in place to enhance FPB's fruit and vegetable inspection processes.

This rule should increase user fee revenue generated under the destination

market program by approximately $1.8 million or 15 percent. While most of the fees will increase by approximately 15 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as ''sublots,'' would be increased from $14 to $45 because FPB's current fee does not nearly cover the costs of performing these inspections (between 30 to 35 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends. This action is authorized under the Agricultural Marketing Act of 1946 (AMA of 1946) (*see 7* U.S.C. 1622(h)), which provides that the Secretary of Agriculture may assess and collect ''such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * * '' There are more than 2,000 users of FPB's destination market grading services (including applicants who must meet import requirements[1]— inspections which amount to under 2.5 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). There would be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements in part 51 have been approved previously by OMB and assigned OMB No. 0581–0125. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this rule.

The destination market grading services are voluntary (except when required for imported commodities) and the fees charged to users of these services vary with usage. However, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is not excessive and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Action

The AMA of 1946 authorizes official inspection, grading, and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA of 1946 provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This rule would amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

The Agricultural Marketing Service (AMS) regularly reviews its user-fee programs to determine if the fees are adequate. While the Fresh Products Branch (FPB) of the Fruit and Vegetable Programs, AMS, continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for destination market inspection work during FY–03 are $12.0 million with costs projected at $18.3 million and an end-of-year reserve of $14.8 million. However, this reserve balance is due to appropriated funding received from Congress in October of 2001. These funds were established to build up the terminal market inspection reserve fund and for infrastructure improvements including development and maintenance of the inspector training center, workplace and technological improvements, including digital imaging and automation of the inspection process. However, by FY–07, without increasing fees, FPB's trust fund balance for this program will be below the agency mandated four-months of operating reserve (approximately $4.6 million) deemed necessary to provide an adequate reserve balance in light of increasing program costs. Further, FPB's costs of operating the destination market program are expected to increase to approximately $18.9 million during FY–04 and to approximately $19.4 million during FY 05. These cost increases (which are outlined below) will result from inflationary increases with regard to current FPB operations and services (primarily salaries and benefits), increased inspection demands, and the acquisition and maintenance of computer technology (*i.e.*, FEIRS).

This rule should increase user fee revenue generated under the destination market program by approximately $1.8 million or 15 percent per year. While most of the fees will increase by approximately 15 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as ''sublots,'' would be increased from $14 to $45 because FPB's current fee does not nearly cover the costs of performing these inspections (between 30 to 35 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 4.02 to 4.87 percent depending on locality, effective January 2003, has significantly increased program costs. This salary adjustment will increase FPB's costs by over $700,000 per year. Increases in health and life insurance premiums, along with workers compensation will also increase program costs. Since FPB's last fee increase, many employees have converted to or were hired under the Federal Employees Retirement System (FERS), which has also contributed to

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply during those periods when domestic marketing order regulations are in effect. Section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171), 7 U.S.C. 7958, required USDA among other things to develop new peanut quality and handling standards for imported peanuts marketed in the United States.

Currently, there are 14 commodities subject to 8e import regulations: Avocados, dates (other than dates for processing), filberts, grapefruit, kiwi fruit, olives (other than Spanish-style green olives), onions, oranges, potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR parts 944, 980, 996, and 999.

the increase in program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional revenues (approximately $155,000) are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to continue to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began in 2001, developing (with appropriated funds) an automated system recently named the Fresh Electronic Inspection Reporting/Resource System (FEIRS) to replace its manual paper and pen inspection reporting process. Approximately $200,000 in additional revenue is needed to complete the development and deployment of FEIRS, and it will take approximately $10,000 per month to maintain the system. This system has been put in place to enhance FPB's fruit and vegetable inspection processes.

Based on the aforementioned analysis of this program's increasing costs, AMS to increase the fees for destination market inspection services. The following table compares current fees and charges with the fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. This table also reflects the change to the per package fees for dock-side inspections that are currently on a three interval schedule based on weight, to a two interval schedule based on different weight thresholds. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

Service	Current	Proposed
Quality and condition inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$86.00	$99.00
—Half carlot equivalent or less of each product	$72.00	$83.00
—For each additional lot of the same product*	$14.00	$45.00
Condition only inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$72.00	$83.00
—Half carlot equivalent or less of each product	$66.00	$76.00
—For each additional lot of the same product*	$14.00	$45.00
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
—For each product	$43.00	$45.00
—For each additional lot of any of the same product*	$14.00	$45.00
—Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot		
Dock side inspections of an individual product unloaded directly from the same ship:		
—For each package weighing N/A less than 15 pounds	1.1 cent	N/A
—For each package weighing less than 30 pounds (previously 15–29 pounds)	2.2 cents	2.5 cents.
—For each package weighing 30 or more pounds	3.3 cents	3.8 cents.
—Minimum charge per individual product	$86.00	$99.00
—Minimum charge for each additional lot of the same product	$14.00	$45.00
Hourly rate for inspections performed for other purposes during the grader's regularly scheduled work week.	$43.00	$49.00
—Hourly rate for other work performed during the graders regular scheduled work week will be charged at a reasonable rate		
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	$21.50	$25.00
Hourly rate for inspections performed under 40 hour contracts during the grader's regularly scheduled work week*.	$40.00	$49.00
Rate for billable mileage	$1.00	$1.00

A notice of proposed rulemaking was published in the **Federal Register** on September 8, 2003 (7 CFR part 51). The workplan for the proposed FPB fee increase was classified as non-significant and approved by OMB on June 10, 2003. The comment period ended on October 8, 2003, and FPB received two comments during this period.

The first comment was received from the Washington State Potato Commission (WSPC) opposed raising inspection fees at this time. WSPC asked ''is it necessary to raise salaries'' and the answer is yes. General and locality salary increases for Federal employees are mandated by Federal law. WSPC also recommended that FPB use its reserve funds. FPB is indeed utilizing its reserve fund to sustain the Federal market inspection program. However, if fees are not increased, the reserve fund would become depleted. The market inspection program reserve level is set by the Agency. A fee increase is necessary in order to prevent falling below the mandated four-month reserve level in FY–2007.

The second comment received from the California Grape and Tree Fruit League (CGTFL) did not oppose the proposed fee increase. CGTFL recommended that FPB make every effort to minimize costs and maximize the efficiency of the program, to maintain training programs for inspections and oversight, to make more inspection data available to the industry, and to seek input from the produce industry. FPB has been and remains committed to such recommendations. Further, FPB has and will continue to seek out cost saving opportunities within the program. Accordingly, in light of the continuing need to maintain the inspection program on a financially sound basis, the Agency has decided to proceed with the fee increase as set forth in the proposal.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

■ For the reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) Quality and condition inspections of products in quantities of 51 or more packages and unloaded from the same land or air conveyance:

(i) $99 for over a half carlot equivalent of an individual product;

(ii) $83 for a half carlot equivalent or less of an individual product;

(iii) $45 for each additional lot of the same product.

(2) Condition only inspection of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:

(i) $83 for over a half carlot equivalent of an individual product;

(ii) $76 for a half carlot equivalent or less of an individual product;

(iii) $45 for each additional lot of the same product.

(3) For quality and condition inspection and condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $45 for each individual product;

(ii) $45 for each additional lot of any of the same product. Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) Dock side inspections of an individual product unloaded directly from the same ship:

(i) 2.5 cents per package weighing less than 30 pounds;

(ii) 3.8 cents per package weighing 30 or more pounds;

(iii) Minimum charge of $99 per individual product;

(iv) Minimum charge of $45 for each additional lot of the same product.

(2) [Reserved]

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dock-side, the carlot fees in paragraph (a) of this section shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in paragraphs (a) through (c) of this section, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $49 an hour: *Provided,* That:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections;

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee;

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $25.00 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: December 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30999 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 91 and 96

[Docket Number ST02–03]

RIN 0581–AC18

Removal of Cottonseed Chemist Licensing Program, Updating of Commodity Laboratory and Office Addresses, and Adoption of Information Symbols

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Agricultural Marketing Service (AMS) regulations by removing the cottonseed chemist licensing program and the related official cottonseed grading program. This regulation will update various commodity testing laboratory addresses and will adopt two information symbols in the form of approved AMS shields to indicate that products have been tested by AMS.

EFFECTIVE DATE: This rule is effective January 15, 2004.

FOR FURTHER INFORMATION CONTACT: James V. Falk, Docket Manager, USDA, AMS, Science and Technology, 1400 Independence Avenue, SW., Room 3521 South Agriculture Building, Mail Stop 0272, Washington, DC 20250–0272; telephone (202) 690–4089; fax (202) 720–4631, or e-mail: *James.falk@usda.gov.*

SUPPLEMENTARY INFORMATION: On August 13, 2003, AMS published in the **Federal Register** (68 FR 48322–48326) a proposed rule with a 30-day comment period to provide an opportunity for interested individuals to comment on the removal of 7 CFR part 96, the 67-year-old USDA cottonseed chemist licensing program and the related official cottonseed grading program. The programs have been inoperative since June 3, 1999. Two information symbols in the form of approved AMS shields to indicate that products have been tested by AMS were also proposed. No comments were received. Therefore, AMS is adopting the proposed as a final rule, without change.

Executive Order 12866 and Executive Order 12988

This rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice

Reform. It is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Even though an official cottonseed grading certificate has not been issued since June 3, 1999, there are some potential users available that may use the cottonseed chemist licensing program services. Such possible users of program services include 35 oil mills, 1,400 U.S. cottonseed gins, 11 private laboratories, and exporters. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

USDA licensed cottonseed chemist program service and official cottonseed grade determinations are provided to all businesses on a voluntary basis and user fees to administer the program are listed in 7 CFR part 96. Any decision to discontinue the use of the official cottonseed grading services (with a unit certificate fee) at private laboratories and obtain new contracts with their customers based upon unofficial grade of seed (without a fee) would not hinder the cottonseed industry members from marketing their products. Monthly published Marketing News reports for cottonseed are based entirely on summary information of the quality and quantity factors and grades obtained from all official certificates issued by licensed chemists. There has been no official cottonseed grade certificate issued from a licensed chemist since June 3, 1999. All cottonseed business since that date has been based on an unofficial cottonseed grade. User fee costs to entities would be proportional to their use of program services, so that costs are shared equitably by all users.

The last fee increases for the USDA Cottonseed Chemist Licensing Program services became effective on May 4, 1998 (63 FR 16370–16375). Since June 1999, no revenue has been available to administer the program and there has been a yearly increase in cost of living for the Federal employee salaries and benefits ($47,786) that comprise 72 percent of total program expenses. No program revenue is generated because there has been a shift in usage patterns on the part of the cottonseed industry for testing and grading services by chemists. The industry is now relying entirely on an unofficial cottonseed grade certification for their purchase and trade decisions.

Other miscellaneous and unsubstantial changes which would be made by the rule will not adversely affect users of the program services. The addition of two information symbols in the form of approved AMS shields and their inclusion in the regulations will not add further costs to users of the variety of AMS Science and Technology laboratory testing services.

Accordingly, the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain any new information collection or record keeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Background Information

On August 9, 1993, AMS published a rule in the **Federal Register** (58 FR 42408–42448) to combine AMS regulations concerning laboratory services. The goal was to consolidate and to transfer existing laboratory testing programs operating independently under the various commodity programs into the Science and Technology (S&T) program, formerly the Science Division and the Science and Technology Division (S&TD). All divisions in the Agricultural Marketing Service (AMS) were designated as programs by the Administrator on September 18, 1997.

The description of examination and licensure services provided in § 91.4 will be broadened to include other laboratory and testing licenses provided by the Science & Technology programs. In addition, since this final rule removes the Cottonseed Chemist Licensing Program then the limited description of services will no longer be applicable. Science & Technology Program laboratories and facilities have undergone modernization and consolidation since May 1998. In many instances the addresses of the locations changed in § 91.5. A major change was the October 2002 opening of the National Science Laboratory in Gastonia, North Carolina which now has biotechnology testing facilities.

On November 1, 1999 the USDA Office of Communications approved two information symbols in the form of AMS shields to be added to the USDA/AMS inventory and they are acceptable for use with AMS materials. The two approved AMS shields with the words ''USDA AMS TESTED'' and ''USDA LABORATORY TESTED FOR EXPORT'' will be added to the regulations in 7 CFR part 91. A major role of the Science and Technology program for the Agency is to perform analytical testing services of commodities. The approved AMS shields are designed to enhance the acceptance of AMS tested agricultural commodities on a national or international basis.

The licensed cottonseed chemist program and official grade certification are voluntary, user fee-funded services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622, 1624). Under the current USDA program, chemists in private laboratories are licensed to analyze cottonseed in order to certify its quality, to access its lot potential for oil yield at seed crushing mills, and to determine the grade of official samples of cottonseed produced at cotton gins according to the rules, regulations and By-Laws of the National Cottonseed Products Association (NCPA). A representative lot of cottonseed for official grade determination is generally limited to a maximum of 150 tons for quality concerns. An official certificate is issued by the licensed chemist for each official cottonseed sample at a present unit fee of $3.18 to cover the costs of the USDA program.

The USDA licensed cottonseed chemist program originated on July 31, 1937 when a Bureau of the United States Department of Agriculture published a rule in the **Federal Register** (2 FR 1348–1353) and provided the details for the program. On August 14, 1937 the first user fee increase for the program occurred when the issuance cost for each certificate of the official grade of cottonseed increased from 10 cents to 25 cents (2 FR 1400).

The regulations in 7 CFR part 96 include in subpart A the details of the USDA cottonseed chemist licensing program (under the AMS Cotton Division's supervision for the last time in 1988) and the applicable user fees. In subpart B the method used to calculate official cottonseed grade was provided.

The current fees have been in effect since May 4, 1998 (63 FR 16370–16375). The fees include $1,166 for a chemist's license examination, $292 for a chemist's license renewal, a $3.18 fee per official cottonseed grade certificate issued, and a $60 fee for the review of the grading of an official lot of cottonseed. The number of official

cottonseed grade certificates issued by licensed chemists dropped from 36,565 in fiscal year 1992 to 5,718 in early fiscal year 1999, and zero official grade certificates thereafter. The large decline in official cottonseed grade certificates was due to the 40 percent divergence of cottonseed usage from human food to dairy animal feed. In addition, many large oil mills have set up their own laboratories to perform cottonseed quality testing and have established trade relations with their customers based on an unofficial grade of cottonseed.

The S&T programs are mainly voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The Act authorizes the Department to provide analytical testing services that facilitate marketing and allow commodity products to obtain grade designations or meet marketing standards. In addition, the laboratory tests establish quality standards for the agricultural commodities. The Act also requires that reasonable and reimbursable fees be collected from users of the program services to cover, as nearly as practicable, the costs of the services rendered to maintain the program. At a May 1999 annual meeting, the National Cottonseed Products Association was provided an analysis of the services the Agency provides for the official cottonseed grade determination, and the revisions of fees that are needed to continue services to the extent commensurate with the actual costs. The industry expressed strong resistance to paying the increased costs needed to provide the official cottonseed grading service that includes official sampling expenses. It was their recommendation to eliminate the cottonseed chemist licensing program. In June 1999 the last official cottonseed grade certificate was issued and no revenue has been obtained from the USDA cottonseed chemist licensing program since that time to the present. The program has become a financial burden to AMS. The total obligatory cost to Science and Technology to carry the program forward to the full completion of fiscal year (FY) 2004 would be $65,939. This cost consists of $47,786 for salaries and benefits, $2,480 for USDA blind check sample preparation, $7,101 for travel, $3,575 for rent/utilities/communications, and $4,997 for administrative overhead. The Agency has no projected revenue to continue the program operation using the current user fee schedule. Hence, this rule will terminate the cottonseed chemist licensing program and will remove related official cottonseed grading from the regulations and associated fees. This rule removes 7 CFR part 96 in its entirety. Private or non-government laboratories will no longer be allowed to hold USDA cottonseed chemist licenses. There will be no need for persons to possess cottonseed sampler licenses or similar designations. All such former chemist and sampler licensees will be instructed and will be required to return their licenses to offices at AMS headquarters. Marketing News for official cottonseed grade will no longer be available.

This rule will also update various commodity testing laboratory addresses and will adopt approved AMS shields to indicate that products have been tested by AMS. The new shields will be placed in a new subpart together with appropriate definitions.

List of Subjects

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 96

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 91 and 96 are amended as follows:

PART 91—[AMENDED]

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

■ 2. In § 91.4, paragraph (b) is revised to read as follows:

§ 91.4 Kinds of services.

* * * * *

(b) *Examination and licensure.* The manager of a particular Science and Technology program administers examinations and licenses analysts in laboratories for competency in performing commodity testing services.

* * * * *

■ 3. Section 91.5 is revised to read as follows:

§ 91.5 Where services are offered.

(a) Services are offered to applicants at the Science and Technology field service laboratories and facilities in the following list:

(1) *Science and Technology regional laboratory.* A variety of tests and laboratory analyses are available in one regional multi-disciplinary Science and Technology (S&T) laboratory, and is located as follows: USDA, AMS, Science and Technology, National Science Laboratory, 801 Summit Crossing Place, Suite B, Gastonia, NC 28054–2193.

(2) *Science and Technology (S&T) satellite laboratories.* The specialty laboratories performing mycotoxin and other chemical testing on peanuts, peanut products, dried fruits, grains, edible seeds, tree nuts, shelled corn products, oilseed products and other commodities as well as proximate analyses on foods are:

(i) USDA, AMS, Science & Technology, 959 North Main Street, Blakely, GA 39823–2030.

(ii) USDA, AMS, Science & Technology, 107 South Fourth Street, Madill, OK 73446–3431.

(iii) USDA, AMS, Science & Technology, c/o Golden Peanut Company LLC (Mail: P.O. Box 272; Dawson, GA 31742–0272), 715 Martin Luther King Jr. Drive, Dawson, GA 39842–1002.

(iv) USDA, AMS, S&T, Mail: P.O. Box 1130, 308 Culloden Street, Suffolk, VA 23434–4706.

(3) *Citrus laboratory.* The Science and Technology's citrus laboratory specializes in testing citrus juices and other citrus products and is located as follows: USDA, AMS, Science & Technology Citrus Laboratory, 98 Third Street, SW., Winter Haven, FL 33880–2905.

(4) *Program laboratories.* Laboratory services are available in all areas covered by cooperative agreements providing for this laboratory work and entered into on behalf of the Department with cooperating Federal or State laboratory agencies pursuant to authority contained in Act(s) of Congress. Also, services may be provided in other areas not covered by a cooperative agreement if the Administrator determines that it is possible to provide such laboratory services.

(5) *Other alternative laboratories.* Laboratory analyses may be conducted at alternative Science and Technology laboratories and can be reached from any commodity market in which a laboratory facility is located to the extent laboratory personnel are available.

(6) *Science and Technology headquarters offices.* The examination, licensure, quality assurance reviews, laboratory accreditation/certification and consultation services are provided by headquarters staff located in Washington, DC. The main headquarters office is located as follow: USDA, AMS,

Science and Technology, Office of the Deputy Administrator, Room 3507 South Agriculture Bldg., Mail Stop 0270, 1400 Independence Ave., SW., Washington, DC 20250–0270.

(7) *The Information Technology (IT) Group.* The IT office of the Science and Technology programs is headed by the Associate Deputy Administrator for Technology/Chief Information Officer and provides information technology services and management systems to the Agency and other agencies within the USDA. The main IT office is located as follow: USDA, AMS, Science and Technology, Office of the Associate Deputy Administrator for Technology, 1752 South Agriculture Bldg., Mail Stop 0204, 1400 Independence Ave., SW., Washington, DC 20250–0204.

(8) *Statistics Branch Office.* The Statistics Branch office of Science and Technology (S&T) provides statistical services to the Agency and other agencies within the USDA. In addition, the Statistics Branch office generates sample plans and performs consulting services for research studies in joint efforts with or in a leading role with other program areas of AMS or of the USDA. The Statistics Branch office is located as follows: USDA, AMS, S&T Statistics Branch, 0603 South Agriculture Bldg., Mail Stop 0223, 1400 Independence Ave., SW., Washington, DC 20250–0223.

(9) *Technical Services Branch Office.* The Technical Services Branch office of Science and Technology (S&T) provides technical support services to all Agency programs and other agencies within the USDA. In addition, the Technical Services Branch office provides certification and accreditation services of private and State government laboratories as well as oversees quality assurance programs; import and export certification of laboratory tested commodities. The Technical Services Branch office is located as follows: USDA, AMS, S&T Technical Services Branch, 3521 South Agriculture Bldg., Mail Stop 0272, 1400 Independence Ave., SW., Washington, DC 20250–0272.

(10) *Monitoring Programs Office.* Services afforded by the Pesticide Data Program (PDP) and Microbiological Data Program (MDP) are provided by USDA, AMS, Science and technology Monitoring Programs Office (MDP and PDP), 8609 Sudley Road, Suite 206, Manassas, VA 20119–8411.

(11) *Federal Pesticide Record Keeping Program Office.* Services afforded by the Federal Pesticide Record Keeping Program for restricted-use pesticides by private certified applicators are provided by USDA, AMS, Science and Technology, Pesticide Records Branch, 8609 Sudley Road, Suite 203, Manassas, VA 20110–8411.

(b) The addresses of the various laboratories and offices appear in the pertinent parts of this subchapter. A prospective applicant may obtain a current listing of addresses and telephone numbers of Science and Technology laboratories, offices, and facilities by addressing an inquiry to the Administrative Officer, Science and Technology, Agricultural Marketing Service, United States Department of Agriculture (USDA), 1400 Independence Ave., SW., Room 0725 South Agriculture Building, Mail Stop 0271, Washington, DC 20250–0271.

■ 4. A new subpart J is added to read as follows:

Subpart J—Designation of Approved Symbols for Identification of Commodities Officially Tested By AMS

Sec.
91.100 Scope.
91.101 Definitions.
91.102 Form of official identification symbols.

§ 91.100 Scope.

Two approved information symbols in the form of AMS shields are available to indicate official testing by an AMS laboratory. The two approved AMS shields with the words ''USDA AMS TESTED'' and ''USDA LABORATORY TESTED FOR EXPORT'' are added to the USDA symbol inventory to enhance the acceptance of AMS tested agricultural commodities on a national or international basis.

§ 91.101 Definitions.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

AMS. The abbreviation for the Agricultural Marketing Service (AMS) agency of the United States Department of Agriculture.

Export. To send or transport a product originally created or manufactured in the United States of America to another country in the course of trade.

Laboratory. An AMS Science and Technology (S&T) laboratory listed in § 91.5 that performs the official analyses.

Test. To perform chemical, microbiological, or physical analyses on a sample to determine presence and levels or amounts of a substance or living organism of interest.

USDA. The abbreviation for the United States Department of Agriculture.

§ 91.102 Form of official identification symbols.

Two information symbols in the form of AMS shields indicate commodity testing at an AMS laboratory listed in § 91.5 of this part. The AMS shield set forth in figure 1 of this section, containing the words ''USDA AMS TESTED'', and the shield set forth in figure 2, containing the words ''USDA LABORATORY TESTED FOR EXPORT'' have been approved by the USDA Office of Communications to be added to the USDA/AMS inventory of symbols. Each example of an AMS shield has a black and white background; however the standard red, white and blue colors are approved for the shields. They are approved for use with AMS materials. Shields with the same wording that are similar in form and design to the examples in figures 1 and 2 of this section may also be used.

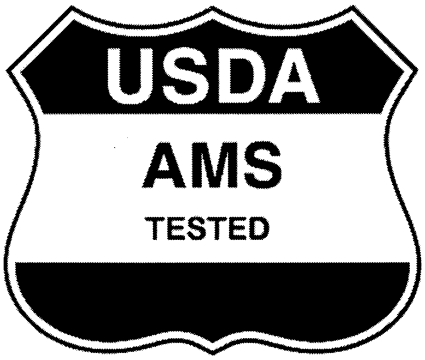

Figure 1.

Figure 2.

PART 96—[REMOVED AND RESERVED]

■ 4a. Under the authority of 7 U.S.C. 1622 and 1624, part 96 is removed and reserved.

Dated: December 9, 2003

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30996 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 772, 1901, and 1951

RIN 0560–AG67

Servicing Minor Program Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule consolidates, clarifies and revises the servicing regulations for the Minor Programs currently administered by the Farm Service Agency, Farm Loan Programs (FSA). Minor Program loans involve existing loans only since there is no longer funding for new loans in these programs. FSA Minor Programs consist of the following loan types: Grazing Association loans and Irrigation and Drainage Association loans previously administered by the U.S. Department of Agriculture's Rural Development (RD) mission area, and Non-Farm Enterprise and Recreation Loans made to individuals previously administered by FSA. Recreation loans to associations will continue to be serviced by the RD mission area.

EFFECTIVE DATE: January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Mel Thompson, Senior Loan Officer, Farm Service Agency; telephone: (202) 720–7862; Facsimile: (202) 690–1196; e-mail: *mel_thompson@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Discussion of the Final Rule

This rule consolidates and clarifies the servicing policies of the Farm Service Agency's Minor Loan Programs. The Minor Programs were administered by the former Farmers Home Administration (FmHA). Under the discretionary authority of the Department of Agriculture Reorganization Act of 1994, Public Law 103–354, on October 20, 1994, the Individual-type loans (Non-Farm Enterprise and Recreation loans) were assigned to FSA. The Association-type loans (Grazing Associations and Irrigation and Drainage loans) were assigned to the RD mission area. Regulations for servicing the Association-type loans of these programs were found at 7 CFR part 1901, subpart E for civil rights compliance; 7 CFR part 1951, subpart E for servicing; 7 CFR part 1951, subpart F for graduation; 7 CFR part 1956, subpart C for debt settlement; and 7 CFR part 1962 subpart A for bankruptcy. Individual-type Minor Program loans are the Non-Farm Enterprise loans defined in 7 CFR 1941.4 and 1943.4 and which are a subgroup of FSA, Farm Operating and Farm Ownership loans; and Recreation loans, which are defined as Farm Loan Program (FLP) loans under 7 CFR 1951.906. Although these loans are no longer made by FSA, they are serviced as FLP loans in accordance with 7 CFR part 1951, subpart S.

Because the current delegation of these similar loan programs between the FSA and RD mission area is inefficient, this rule removes parts of regulations that are currently shared by FSA and the agencies of the RD mission area and establishes a consolidated FSA regulation governing these programs. Information not specific to the Minor Programs has been eliminated and language has been improved for readability.

On April 9, 2003, the Farm Service Agency published a proposed rule (68 FR 17320) requesting comments regarding proposed consolidation and revision of the rules affecting the FSA Minor Programs. A comment was received from an Agency employee regarding servicing violations of non-compliance with civil rights laws by Minor Program borrowers. The commentor suggested that the Agency provide notices and try to correct the violation rather than going right into liquidation.

The Agency is adopting the comment. The Agency has clarified its civil rights compliance standards contained in § 772.3(a) and (d) since FSA's civil rights compliance procedures contained in Departmental regulations at 7 CFR 15.8 and internal Departmental Memorandum 4330–002, March 3, 1999, available on the Departmental website, also apply. The comment pertains only to association type loans (AMP) which are Federal financial assistance because the borrowers are the recipients of the Federal funding but are not the ultimate beneficiary of the program. *See* 7 CFR 15.2 for the definition of these terms in a civil rights context. In this situation FSA acts as an enforcement agent of civil rights laws, and no violations of civil rights laws by FSA have been alleged. Departmental Memorandum 4330–002, ¶ 9 establishes a detailed compliance procedure, which provides notice and the opportunity to correct the violation before enforcement proceedings are undertaken. Moreover, 7 CFR part 15, subpart A provides an informal and formal means of disputing compliance issues through a fact finding process. Since these additional authorities already apply to civil rights compliance reviews, FSA has referenced these standards in § 772.3.

In addition, the Agency is clarifying its liquidation policy. Section 772.16 is revised to state that for Association-Type loans (AMP), the notice of acceleration will include appeal rights. For Individual-Type loans (IMP), § 772.16 states that all appeals must be exhausted before the notice of acceleration is issued; however, the notice of acceleration itself is not appealable. Thus, for both types of Minor Program loans, borrowers can dispute factual issues before liquidation. FSA has maintained the different timing for appealing adverse Agency decisions. AMP loans were previously serviced by the RD mission area under regulations providing for appeals in the notice of acceleration. IMP loans serviced by FSA before this rule are still considered Farm Loan Program (FLP) loans which by regulation require that all appeals precede acceleration.

Executive Order 12866

This rule has been determined under Executive Order 12866 to be not significant and was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, the Agency has determined that there will not be a significant economic impact on a substantial number of small entities. All Farm Service Agency direct loan borrowers and all entities affected by this rule are small businesses according to the North American Industry Classification System, and the United States Small Business Administration. There is no diversity in size of the entities affected by this rule and the costs to comply with it are the same for

all entities. FSA stated its finding in the proposed rule at 68 FR 17320, April 9, 2003, that the rule will not have a significant economic impact on a substantial number of small entities, and received no comments on this finding.

There are currently 346 Minor Loan Program borrowers including 61 Grazing Associations, 39 Irrigation and Drainage Associations, 218 Non-Farm Enterprise loans, and 28 Recreations loans to individuals which total less than $22,000,000 in outstanding indebtedness. This rule consolidates the regulations governing these programs, but it contains no new requirements nor does it eliminate any provision in previous regulations. This rule does not limit options available to program participants, or change any aspect of the program that would have a significant effect on the business of these associations. Therefore, the costs of compliance resulting from this rule are deemed not significant. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Evaluation

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799 and 1940, subpart G. FSA completed an environmental evaluation and concluded that the rule requires no further environmental review because no new loans are authorized. Servicing existing loans in accordance with previously published rules containing environmental requirements is not a major Federal action significantly affecting the quality of the human environment. No extraordinary circumstances or other unforeseeable factors exist which required preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 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) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

As stated in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule do not require consultation with state and local officials under the scope of Executive Order 12372.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. This rule contains no Federal mandates, as defined by title II of the UMRA; therefore, this rule is not subject to sections 202 and 205 of the UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on 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 any new significant loan servicing criteria on state and local governments. The rule revises the citation references and consolidates the servicing regulations to streamline loan servicing criteria applicable to Minor Programs. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR parts 772, 1901, subpart E, and 1951, subparts E and F, contained in this rule only delete requirements and propose no new collections nor do they significantly affect the aggregate information collection burden of the Agencies. Still, this rule transfers some of the information collections that were approved under OMB control numbers 0575–0118, 0575–0093, and 0575–0066, to part 772, which has been approved by OMB and assigned control number 0560–0230.

Federal Assistance Program

These changes affect no programs listed in the Catalog of Federal Domestic Assistance.

List of Subjects in 7 CFR

Part 772

Agriculture, Credit, Rural areas.

Part 1901

Civil rights, Compliance reviews, Minority groups.

Part 1951

Account servicing, Grant programs—housing and community development, Reporting requirements, Rural areas.

■ Accordingly, for the reasons stated in the preamble, 7 CFR part 772 is added and parts 1901 and 1951 are revised as follows:

■ 1. Add part 772 to read as follows:

PART 772—SERVICING MINOR PROGRAM LOANS

Sec.
772.1 Policy.
772.2 Abbreviations and definitions.
772.3 Compliance.
772.4 Environmental requirements.
772.5 Security maintenance.
772.6 Subordination of security.
772.7 Leasing minor program loan security.
772.8 Sale or exchange of security property.
772.9 Releases.
772.10 Transfer and assumption—AMP loans.
772.11 Transfer and assumption—IMP loans.
772.12 Graduation.
772.13 Delinquent account servicing.
772.14 Reamortization of AMP loans.
772.15 Protective advances.
772.16 Liquidation.
772.17 Equal Opportunity and non-discrimination requirements.
772.18 Exception authority.

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 25 U.S.C. 490.

§ 772.1 Policy.

(a) *Purpose.* This part contains the Agency's policies and procedures for servicing Minor Program loans which include: Grazing Association loans, Irrigation and Drainage Association loans, and Non-Farm Enterprise and Recreation loans to individuals.

(b) *Appeals.* The regulations at 7 CFR parts 11 and 780 apply to decisions made under this part.

§ 772.2 Abbreviations and Definitions.

(a) *Abbreviations.*

AMP Association-Type Minor Program loan;
CFR Code of Federal Regulations;
FO Farm Ownership Loan;
FSA Farm Service Agency;
IMP Individual-Type Minor Program loan;
OL Operating Loan;
USDA United States Department of Agriculture.

(b) *Definitions.*

Association-Type Minor Program loans (AMP): Loans to Grazing Associations and Irrigation and Drainage Associations.

Entity: Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

Graduation: The requirement contained in loan documents that borrowers pay their FSA loan in full with funds received from a commercial lending source as a result of improvement in their financial condition.

Individual-type Minor Program loans (IMP): Non-Farm Enterprise or Recreation loans to individuals.

Member: Any individual who has an ownership interest in the entity which has received the Minor Program loan.

Minor Program: Non-Farm Enterprise, Individual Recreation, Grazing Association, or Irrigation and Drainage loan programs administered or to be administered by FSA

Review official: An agency employee, contractor or designee who is authorized to conduct a compliance review of a Minor Program borrower under this part.

§ 772.3 Compliance.

(a) *Requirements.* No Minor Program borrower shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, color, national origin, or disability. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. AMP borrowers are subject to the nondiscrimination provisions applicable to Federally assisted programs contained in 7 CFR part 15, subparts A and C, and part 15b. IMP loans are subject to the nondiscrimination provisions applicable to federally conducted programs contained in 7 CFR parts 15d and 15e.

(b) *Reviews.* In accordance with Title VI of the Civil Rights Act of 1964, the Agency will conduct a compliance review of all Minor Program borrowers, to determine if a borrower has directly, or through contractual or other arrangement, subjected any person or caused any person to be subjected to discrimination on the basis of race, color, or national origin. The borrower must allow the review official access to their premises and all records necessary to carry out the compliance review as determined by the review official.

(c) *Frequency and timing.* Compliance reviews will be conducted no later than October 31 of every third year until the Minor Program loan is paid in full or otherwise satisfied.

(d) *Violations.* If a borrower refuses to provide information or access to their premises as requested by a review official during a compliance review, or is determined by the Agency to be not in compliance in accordance with this section or Departmental regulations and procedures, the Agency will service the loan in accordance with the provisions of § 772.16 of this part.

§ 772.4 Environmental requirements.

Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with 7 CFR part 1940, subpart G and the exhibits to that subpart and 7 CFR part 799.

§ 772.5 Security maintenance.

(a) *General.* Borrowers are responsible for maintaining the collateral that is serving as security for their Minor Program loan in accordance with their lien instruments, security agreement and promissory note.

(b) *Security inspection.* The Agency will inspect real estate that is security for a Minor Program loan at least once every 3 years, and chattel security at least annually. More frequent security inspections may be made as determined necessary by the Agency. Borrowers will allow representatives of the Agency, or any agency of the U.S. Government, in accordance with statutes and regulations, such access to the security property as the agency determines is necessary to document compliance with the requirements of this section.

(c) *Violations.* If the Agency determines that the borrower has failed to adequately maintain security, made unapproved dispositions of security, or otherwise has placed the repayment of the Minor Program loan in jeopardy, the Agency will:

(1) For chattel security, service the account according to 7 part 1962, subpart A. If any normal income security as defined in that subpart secures a Minor Program loan, the reporting, approval and release provisions in that subpart shall apply.

(2) For real estate security for AMP loans, contact the Regional Office of General Counsel for advice on the appropriate servicing including liquidation if warranted.

(3) For real estate security for IMP loans, service the account according to 7 CFR part 1965, subpart A.

§ 772.6 Subordination of security.

(a) *Eligibility.* The Agency shall grant a subordination of Minor Program loan security when the transaction will further the purposes for which the loan was made, and all of the following are met:

(1) The loan will still be adequately secured after the subordination, or the value of the loan security will be increased by the amount of advances to be made under the terms of the subordination.

(2) The borrower can document the ability to pay all debts including the new loan.

(3) The action does not change the nature of the borrower's activities to the extent that they would no longer be eligible for a Minor Program loan.

(4) The subordination is for a specific amount.

(5) The borrower is unable, as determined by the Agency, to refinance its loan and graduate in accordance with this subpart.

(6) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to 7 CFR part 1940, subpart G.

(7) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. ''Borrower,'' for purposes of this subparagraph, specifically includes an individual or entity borrower and any member of an entity borrower. ''Controlled substance,'' for the purpose of this subparagraph, is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it, and its members if an entity, have not been convicted of such a crime.

(b) *Application.* To request a subordination, a Minor Program borrower must make the request in writing and provide the following:

(1) The specific amount of debt for which a subordination is needed;

(2) An appraisal prepared in accordance with § 761.7 of this chapter, if the request is for a subordination of more than $10,000, unless a sufficient appraisal report, as determined by the Agency, that is less than one year old, is on file with the Agency; and

(3) Consent and subordination, as necessary, of all other creditors' security interests.

§ 772.7 Leasing minor program loan security.

(a) *Eligibility.* The Agency may consent to the borrower leasing all or a portion of security property for Minor Program loans to a third party when:

(1) Leasing is the only feasible way to continue to operate the enterprise and is a customary practice;

(2) The lease will not interfere with the purpose for which the loan was made;

(3) The borrower retains ultimate responsibility for the operation, maintenance and management of the facility or service for its continued availability and use at reasonable rates and terms;

(4) The lease prohibits amendments to the lease or subleasing arrangements without prior written approval from the Agency;

(5) The lease terms provide that the Agency is a lienholder on the subject property and, as such, the lease is subordinate to the rights and claims of the Agency as lienholder; and

(6) The lease is for less than 3 years and does not constitute a lease/purchase arrangement, unless the transfer and assumption provisions of this subpart are met.

(b) *Application.* The borrower must submit a written request for Agency consent to lease the property.

§ 772.8 Sale or exchange of security property.

(a) For AMP loans.

(1) Sale of all or a portion of the security property may be approved when all of the following conditions are met:

(i) The property is sold for market value based on a current appraisal prepared in accordance with § 761.7 of this chapter.

(ii) The sale will not prevent carrying out the original purpose of the loan. The borrower must execute an Assurance Agreement as prescribed by the Agency. The covenant involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan was made. The instrument of conveyance will contain the nondiscrimination covenants contained in 7 CFR 1951.204.

(iii) The remaining security for the loan is adequate or will not change after the transaction.

(iv) Sale proceeds remaining after paying any reasonable and necessary selling expenses are applied to the Minor Program loan according to lien priority.

(2) Exchange of all or a portion of security property for an AMP loan may be approved when:

(i) The Agency will obtain a lien on the property acquired in the exchange;

(ii) Property more suited to the borrower's needs related to the purposes of the loan is to be acquired in the exchange;

(iii) The AMP loan will be as adequately secured after the transaction as before; and

(iv) It is necessary to develop or enlarge the facility, improve the borrower's debt-paying ability, place the operation on a more sound financial basis or otherwise further the loan objectives and purposes, as determined by the Agency.

(b) For IMP loans.

(1) A sale or exchange of chattel that is serving as security is governed by 7 CFR part 1962, subpart A.

(2) A sale or exchange of real estate that is serving as security for an IMP loan is governed by 7 CFR part 1965, subpart A.

§ 772.9 Releases.

(a) *Security.* Minor Program liens may be released when:

(1) The debt is paid in full;

(2) Security property is sold for market value and sale proceeds are received and applied to the borrower's creditors according to lien priority; or

(3) An exchange in accordance with § 772.7(b) has been concluded.

(b) *Borrower liability.* The Agency may release a borrower from liability when the Minor Program loan, plus all administrative collection costs and charges are paid in full. IMP borrowers who have had previous debt forgiveness on a farm loan program loan as defined in 7 CFR 1951.906, however, cannot be released from liability by FSA until the previous loss to the Agency has been repaid with interest from the date of debt forgiveness. An AMP borrower may also be released in accordance with § 772.10 in conjunction with a transfer and assumption.

(c) *Servicing of debt not satisfied through liquidation.* Balances remaining after sale or liquidation of the security will be subject to administrative offset in accordance with 7 CFR part 3, Department of Treasury Offset Program (TOP) and Treasury Cross-Servicing regulations at 31 CFR part 285 and Federal Claims Collections Standards at 31 CFR parts 900–904. Thereafter the debt settlement provisions in 7 CFR part 1956, subpart B of chapter XVIII of the Code of Federal Regulations or successor regulation apply.

§ 772.10 Transfer and assumption—AMP loans.

(a) *Eligibility.* The Agency may approve transfers and assumptions of AMP loans when:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan;

(2) The transfer will not harm the Government or adversely affect the Agency's security position;

(3) The transferee will continue with the original purpose of the loan;

(4) The transferee will assume an amount at least equal to the present market value of the loan security;

(5) The transferee documents the ability to pay the AMP loan debt as provided in the assumption agreement and has the legal capacity to enter into the contract;

(6) If there is a lien or judgment against the Agency security being transferred, the transferee is subject to such claims. The transferee must document the ability to repay the claims against the land; and

(7) If the transfer is to one or more members of the borrower's organization and there is no new member, there must not be a loss to the Government.

(b) *Withdrawal.* Withdrawal of a member and transfer of the withdrawing member's interest in the Association to a new eligible member may be approved by the Agency if all of the following conditions are met:

(1) The entire unpaid balance of the withdrawing member's share of the AMP loan must be assumed by the new member;

(2) In accordance with the Association's governing articles, the required number of remaining members must agree to accept any new member; and

(3) The transfer will not adversely affect collection of the AMP loan.

(c) *Requesting a transfer and assumption.* The transferor/borrower and transferee/applicant must submit:

(1) The written consent of any other lienholder, if applicable.

(2) A current balance sheet and cash flow statement.

(d) *Terms.* The interest rate and term of the assumed AMP loan will not be changed. Any delinquent principal and interest of the AMP loan must be paid current before the transfer and assumption will be approved by the Agency.

(e) *Release of liability.* Transferors may be released from liability with respect to an AMP loan by the Agency when:

(1) The full amount of the loan is assumed; or

(2) Less than the full amount of the debt is assumed, and the balance remaining will be serviced in accordance with § 772.9(c).

§ 772.11 Transfer and assumption—IMP loans.

Transfers and assumptions for IMP loans are processed in accordance with 7 CFR part 1962, subpart A, for chattel secured loans and 7 CFR part 1965, subpart A, for real estate secured loans. Any remaining transferor liability will be serviced in accordance with § 772.9(c) of this subpart.

§ 772.12 Graduation.

(a) *General.* This section only applies to Minor Program borrowers with promissory notes which contain provisions requiring graduation.

(b) *Graduation reviews.* Borrowers shall provide current financial information when requested by the Agency or its representatives to conduct graduation reviews.

(1) AMP loans shall be reviewed at least every two years. In the year to be reviewed, each borrower must submit, at a minimum, a year-end balance sheet and cash flow projection for the current year.

(2) All IMP borrowers classified as ''commercial'' or ''standard'' in accordance with 7 CFR part 1951, subpart F, shall be reviewed at least every 2 years. In the year to be reviewed, each borrower must submit a year-end balance sheet, actual financial performance for the most recent year, and a projected budget for the current year.

(c) *Criteria.* Borrowers must graduate from the Minor Programs as follows:

(1) Borrowers with IMP loans that are classified as ''commercial'' or ''standard'' must apply for private financing within 30 days from the date the borrower is notified of lender interest, if an application is required by the lender. For good cause, the Agency may grant the borrower a reasonable amount of additional time to apply for refinancing.

(2) Borrowers with AMP loans will be considered for graduation at least every two years or more frequently if the Agency determines that the borrower's financial condition has significantly improved.

§ 772.13 Delinquent account servicing.

(a) *AMP loans.* If the borrower does not make arrangements to cure the default after notice by the Agency and is not eligible for reamortization in accordance with § 772.14, the Agency will liquidate the account according to § 772.16.

(b) *IMP loans.* Delinquent IMP borrowers will be serviced according to 7 CFR part 1951, subpart S, and parts 3 and 1951, subpart C, concerning internal agency offset and referral to the Department of Treasury Offset Program and Treasury Cross-Servicing (or successor regulations).

§ 772.14 Reamortization of AMP loans.

The Agency may approve reamortization of AMP loans provided:

(a) There is no extension of the final maturity date of the loan;

(b) No intervening lien exists on the security for the loan which would jeopardize the Government's security position;

(c) If the account is delinquent, it cannot be brought current within one year and the borrower has presented a cash flow budget which demonstrates the ability to meet the proposed new payment schedule; and

(d) If the account is current, the borrower will be unable to meet the annual loan payments due to circumstances beyond the borrower's control.

§ 772.15 Protective advances.

(a) The Agency may approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to the Agency if the debt instrument provides that the Agency may voucher the account to protect its lien or security.

(b) The Agency may pay protective advances only when it determines it to be in the Government's best financial interest.

(c) Protective advances are immediately due and payable.

§ 772.16 Liquidation.

When the Agency determines that continued servicing will not accomplish the objectives of the loan and the delinquency or financial distress cannot be cured by the options in § 772.13, or the loan is in non-monetary default, the borrower will be encouraged to dispose of the Agency security voluntarily through sale or transfer and assumption in accordance with this part. If such a transfer or voluntary sale is not carried out, the loan will be liquidated according to 7 CFR part 1955, subpart A. For AMP loans, appeal rights under 7 CFR part 11 are provided in the notice of acceleration. For IMP loans, appeal rights must be exhausted before acceleration, and the notice of acceleration is not appealable.

§ 772.17 Equal opportunity and non-discrimination requirements.

With respect to any aspect of a credit transaction, the Agency will comply with the requirements of the Equal Credit Opportunity Act as implemented in 7 CFR 1910.2, and the Department's civil rights policy in 7 CFR part 15d.

§ 772.18 Exception authority.

Exceptions to any requirement in this subpart can be approved in individual cases by the Administrator if application of any requirement or failure to take action would adversely affect the Government's financial interest. Any exception must be consistent with the authorizing statute and other applicable laws.

PART 1901—PROGRAM-RELATED INSTRUCTIONS

Subpart E—Civil Rights Compliance Requirements

■ 2. The authority citation for part 1901 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

§ 1901.204 [Amended]

■ 3. Amend § 1901.204 by:

■ a. Removing paragraphs (a)(1), (2), (4), and (10);

■ b. Redesignating paragraph (a)(3) as paragraph (a)(1);

■ c. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(2) through (6); and

■ d. Redesignating paragraphs (a)(11) through (28) as paragraphs (a)(7) through (24).

PART 1951—SERVICING AND COLLECTIONS

■ 4. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

§ 1951.201 [Amended]

■ 5. Amend 1951.201 by removing the words: ''loans for Grazing and other shift-in-land-use projects;'' and ''Association Irrigation and Drainage loans.''

§ 1951.221 [Amended]

■ 6. Amend § 1951.221 in paragraph (b) heading by removing the words ''Grazing Association Loans, Irrigation and Drainage and other''.

Signed in Washington, DC, on December 10, 2003.

Floyd D. Gaibler,

Acting Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 03–31001 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. LS–02–14]

Amendment to the Soybean Promotion and Research Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Soybean Promotion and Research Rules and Regulations (Rules and Regulations) established under the Soybean Promotion, Research, and Consumer Information Act (Act) by requiring first purchasers of soybeans and producers marketing processed soybeans or soybean products of a producer's own production in the States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region, to remit and report assessments on a quarterly basis rather than a monthly basis. This change reduces the administrative costs of monthly reporting imposed on these smaller soybean producing States and regions.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2638–S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251; telephone 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Soybean Promotion and Research Order (Order) may file a petition with the Department of Agriculture (Department) 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 requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review the Department's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling. Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a QSSB or State soybean assessment.

Regulatory Flexibility Act

AMS has determined that this final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only revises the remittance of assessments and reports from a monthly basis to a quarterly basis for certain States or regions. The States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region are being changed from monthly remitting States or regions to quarterly remitting States or regions to reduce administrative costs. Because of the minimal number of first purchasers, producers, and total remittances from these States and regions, allowing the States or regions to remit and report assessments on a quarterly basis will benefit QSSBs, the States and regions, and the United Soybean Board (Board) by reducing the administrative costs of remitting and reporting assessments on a monthly basis. This action will likely reduce administrative costs by approximately $10,000. As such, these changes will not have a significant impact on a substantial number of small entities. There are an estimated 30,000 soybean producers who pay assessments and an estimated 150 first purchasers who collect assessments in the four affected States and two regions. There are six QSSBs that will be affected under this rule. Most of these entities would be considered small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned OMB control number 0581–0093. The purpose of this rule is to change the remitting and reporting of assessments to a quarterly basis from a monthly basis in four soybean producing States and two regions. There are a minimal number of first purchasers and producers in these four States and two regions. This change will not substantially impact the overall total burden hours. As a result, no change to the previously submitted burden estimate is necessary.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. The final Order establishing a soybean promotion, research, and consumer information program was published in the July 9, 1991, issue of the **Federal Register** (56 FR 31043) and assessments began on September 1, 1991.

The Soybean Promotion and Research Rules and Regulations, 7 CFR part 1220, published in the **Federal Register** on July 2, 1992 (57 FR 29436), specify in § 1220.312(b) that first purchasers and producers responsible for remitting assessments shall remit assessments and reports on a monthly or quarterly basis depending upon the State or region in which they are located. This rule will change the States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region from remitting and reporting assessments on a monthly basis to a quarterly basis. Currently, 15 States and 2 regions report on a monthly basis and 14 States report on a quarterly basis.

The Board, in conjunction with the affected States and regions,

recommended to AMS to change the period for remitting and reporting assessments for the following States or regions from a monthly basis to quarterly basis: Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region.

This rule will assist these smaller soybean producing States and regions (listed above) in reporting and remitting their assessments to the Board. The Board has decided that the current requirement to remit and report assessments on a monthly basis is no longer necessary given the minimal number of first purchasers and total remitters from these smaller soybean producing States and regions. Allowing these States and regions to become quarterly remitters would reduce their administrative costs. It is estimated that administrative costs will be reduced by approximately $10,000 if first purchasers of soybeans and producers marketing processed soybeans and soybean products of a producer's own production in the States and regions of Delaware, Louisiana, South Carolina, Texas, the Eastern Region, and the Western Region remit and report assessments on a quarterly basis. Producers that market soybeans to first purchasers will continue to pay the assessment at the time of settlement. Due to the minimal number of first purchasers and total remittances in these States and regions, allowing the States or regions to remit quarterly will be beneficial to the States, regions, and the Board by reducing the administrative costs of collecting assessments.

Comments

On June 18, 2003, the Department published in the **Federal Register** (68 FR 36498) for comment a proposed rule to amend the Rules and Regulations established under the Act. The proposed rule provided first purchasers of soybeans and producers marketing processed soybeans or soybean products of a producer's own production in the States or regions of Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region, to remit and report assessments on a quarterly basis rather than a monthly basis.

The proposed rule was published with a request for comments to be submitted by July 18, 2003. The Department received one comment, in a timely manner, from an individual who did not support the program in general. This commenter further questioned the impact of the proposal on assessments. In the proposal, we noted that the rule would assist smaller soybean producing States and regions in reporting and remitting their assessments to the Board. We concluded that allowing the States or regions to remit quarterly would be beneficial to the States, regions, and the Board by reducing the administrative costs of collecting assessments. As such this action should impact assessments favorably.

Based on the Board's recommendation, in conjunction with the affected States and regions, and no substantive comments, AMS is changing the period for remitting and reporting assessments for the following States or regions from a monthly basis to a quarterly basis: Delaware, Louisiana, South Carolina, Texas, Eastern Region, and the Western Region.

This rule will become effective April 1, 2004.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7, part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

■ 2. In § 1220.312, the table in paragraph (b) is revised to read as follows:

§ 1220.312 Remittance of assessments and submission of reports to United Soybean Board or Qualified State Soybean Board.

* * * * *

(b) * * *

Monthly	Quarterly
Arkansas	Alabama
Iowa	Delaware
Kansas	Florida
Kentucky	Georgia
Michigan	Illinois
Minnesota	Indiana
Missouri	Louisiana
Mississippi	Maryland
North Carolina	North Dakota
Tennessee	Nebraska
Wisconsin	New Jersey
	Ohio
	Oklahoma
	Pennsylvania
	South Carolina
	South Dakota
	Texas
	Virginia
	Eastern Region
	Western Region

* * * * *

Dated: December 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–31000 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1951

RIN 0560–AG56

Prompt Disaster Set-Aside Consideration and Primary Loan Servicing Facilitation

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published September 25, 2003, which provided disaster set-aside more quickly to those who can most benefit from the program. This document is necessary to correct an editorial mistake relating to the amount which may be set aside.

DATE: This rule is effective on December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0523, telephone (202) 690–4014; electronic mail: *mike_cumpton@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: This document corrects a final rule which amended 7 CFR part 1951 published in the **Federal Register** on September 25, 2003 (68 FR 55299–55304). Section 1951.954(b)(3), as promulgated incorrectly states, ''The installment that may be set aside is limited to the first or second scheduled annual installment due after the disaster occurred and the amount may not exceed the installment set aside.'' This document removes the words, ''and the amount may not exceed the installment set aside'' as extraneous. The maximum set-aside amount is covered by paragraph (b)(4). This correction will make the regulation more clear.

■ For the reason set forth above, the final rule published on September 25, 2003 (68 FR 55299–55304), FR Doc. 03–24177, is corrected as follows:

■ 1. On page 55303, in the third column, revise § 1951.954(b)(3) to read as follows:

§ 1951.954 Eligibility and loan limitation requirements.

* * * * *

(b) * * *

(3) The amount set-aside may not exceed the amount of the first or second scheduled annual installment due after the disaster occurred.

* * * * *

Signed in Washington, DC, on December 10, 2003.

Floyd D. Gaibler,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 03–31002 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 030815201–3306–02]

RIN 0691–AA50

International Services Surveys: BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends 15 CFR 801.9 to set forth the reporting requirements for the BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

The BE–85 survey will be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988. The first survey conducted under this rule will cover transactions in the first quarter of 2004. Data from the BE–85 survey are needed to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government uses.

The survey will cover the same financial services presently covered by the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, which the BE–85 survey would replace, following a final annual data collection for 2003.

EFFECTIVE DATE: This final rule will be effective January 15, 2004.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; or via the Internet at *obie.whichard@bea.gov* (Telephone (202) 606–9890).

SUPPLEMENTARY INFORMATION: In the August 29, 2003, **Federal Register**, (68 FR 51939–51941), BEA published a notice of proposed rulemaking setting forth reporting requirements for the BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. No comments on the proposed rule were received. Thus, the proposed rule is adopted without change.

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In Section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated that authority to BEA.

The major purposes of the survey are to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

BEA will conduct the BE–85 survey on a quarterly basis beginning with the first quarter of 2004. BEA will send the survey to potential respondents in March of 2004. Responses will be due by May 15, 2004. The survey will update the data provided on the universe of financial services transactions between U.S. financial services providers and unaffiliated foreign persons. Reporting is required from U.S. financial services providers whose sales of covered services to unaffiliated foreign persons exceeded $20 million for the previous fiscal year or that expect such sales to exceed that amount during the current fiscal year, or whose purchases of covered services from unaffiliated foreign persons exceeded $15 million for the previous fiscal year or that expect such purchases to exceed that amount during the current fiscal year. Financial services providers meeting any of these criteria must supply data on the amount of their sales or purchases for each covered type of service, disaggregated by country. U.S. financial services providers that do not meet the mandatory reporting requirements are requested to provide voluntary estimates of their total sales or purchases of each type of financial service.

Executive Order 12866

This final rule is not significant for purposes of E.O. 12866.

Executive Order 13132

This final rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

The collection of information required in this final rule has been approved by the Office of Management and Budget under the Paperwork Reduction Act.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any 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 displays a currently valid OMB Control Number; such a Control Number (0608–0065) will be displayed.

The BE–85 survey is expected to result in the filing of reports containing mandatory data from about 55 respondents on a quarterly basis, or 220 responses annually. The average burden for completing the BE–85 is estimated to be 10 hours. Thus, the total respondent burden of the survey is estimated at 2,200 hours (220 responses times 10 hours average burden). The actual burden will vary from reporter to

reporter, depending upon the number and variety of their financial services transactions and the ease of assembling the data. Thus, for each quarter it may range from 4 hours for a reporter that has a small number and variety of transactions and easily accessible data to 100 hours for a very large reporter that engages in a large number and variety of financial services transactions and has difficulty in locating and assembling the required data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) 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; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; or faxed (202–395–7245) or e-mailed (*pbugg@omb.eop.gov*) to the Office of Management and Budget, O.I.R.A., (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed rule would not have a significant economic impact on a substantial number of small entities. A summary of the factual basis for this cert was published in the proposed rule and is not repeated here. No comments were received on the economic impact of the rule. As a result, no final regulation flexibility analysis was prepared.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements.

Dated: November 24, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

■ For the reasons set forth in the preamble, BEA amends 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

■ 2. Section 801.9 is amended by adding new paragraph (c)(4) to read as follows:

§ 801.9 Reports required.

* * * * *

(c) *Quarterly surveys.* * * *

(4) BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering the first quarter of the 2004 calendar year and every quarter thereafter.

(A) *Who must report*—(*1*) *Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and that had sales of covered services to unaffiliated foreign persons that exceeded $20 million for the previous fiscal year or expects sales to exceed that amount during the current fiscal year, or had purchases of covered services from unaffiliated foreign persons that exceeded $15 million for the previous fiscal year or expects purchases to exceed that amount during the current fiscal year. These thresholds should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the thresholds are applied separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(*i*) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgement of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(*ii*) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(*2*) *Voluntary reporting.* If a financial services provider or intermediary, or all of a firm's subsidiaries or parts combined that are financial services providers or intermediaries, had covered sales of $20 million or less, or covered purchases of $15 million or less during the previous fiscal year, and if covered sales or purchases are not expected to exceed these amounts in the current fiscal year, a person is requested to provide an estimate of the total for each type of service for the most recent quarter. Provision of this information is voluntary. The estimates may be based on the reasoned judgement of the reporting entity. Because these thresholds apply separately to sales and purchases, voluntary reporting may apply only to sales, only to purchases, or to both.

(B) *BE–85 definition of financial services provider.* The definition of financial services provider used for this survey is identical in coverage to Sector 52—Finance and Insurance—of the North American Industry Classification System, United States, 2002. For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, holding companies, savings institutions, check cashing, and debit card issuing); nondepository credit intermediation (including credit card issuing, sales financing, and consumer lending); securities, commodity contracts, and other financial investments and related activities (including security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); insurance carriers and related activities (including agents, brokers, and services providers); investment advisors and managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

(C) *Covered types of services.* The BE–85 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and unaffiliated foreign persons: Brokerage

services, including foreign exchange brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; security lending services; electronic funds transfers; and other financial services.

(ii) [Reserved]

* * * * *

[FR Doc. 03–30936 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 5

[Docket No. RM02–16–000]

Hydroelectric Licensing Under the Federal Power Act; Correction

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission is correcting the final rule concerning the process for hydroelectric licensing under the Federal Power Act that was published on August 25, 2003.

EFFECTIVE DATE: October 24, 2003.

FOR FURTHER INFORMATION CONTACT: John Clements, 202–502–8070.

SUPPLEMENTARY INFORMATION: The final rule published on August 25, 2003, at 68 FR 51070 is corrected as follows:

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

§ 4.41 [Corrected]

■ 1. On page 51120, in the first column, the text of § 4.41(h), is corrected as follows: In the eighth sentence, remove the phrase ''or each'' and add in its place the phrase ''of each.''

PART 5—INTEGRATED LICENSE APPLICATION PROCESS

§ 5.1 [Corrected]

■ 2. On page 51121, in the second column, in the text of § 5.1(b), remove the words ''parte'' and ''part'' and add in their place the word ''chapter''.

§ 5.5 [Corrected]

■ 3. On page 51123, in the third column, in the text of § 5.5(b), introductory sentence, remove the phrase ''a letter'' and add in its place the phrase ''an original and eight copies of a letter''.

■ 4. On page 51123, in the third column, in the text of § 5.5(c), remove the phrase ''tribes, and'' and add in its place the phrase ''tribes, local governments, and''.

§ 5.6 [Corrected]

■ 5. On page 51124, in the first column, in the text of § 5.6(a)(1), remove the phrase ''Commission and'' and add in its place the phrase ''Commission and original and eight copies and''.

■ 6. On page 51127, in the first column, in the text of § 5.6(d)(4), remove the phrase ''paragraphs (d)(1) and (d)(2)'' and add in its place the phrase ''paragraph (d)(3)''.

§ 5.9 [Corrected]

■ 7. On page 51128, in the second column, in the text of § 5.9(c), following the word ''incur'', remove the word ''and'' and add in its place the phrase ''in order to''.

§ 5.18 [Corrected]

■ 8. On page 51131, in the third column, in the text of § 5.18(a)(5)(iii), remove the phrase ''A, F, and G'' and add in its place the phrase ''A, B, C, D, F, and G''.

§ 5.19 [Corrected]

■ 9. On page 51135, in the third column, in the text of § 5.19, remove § 5.19(d) and redesignate § 5.19(e) as § 5.19(d).

Magalie R. Salas,

Secretary.

[FR Doc. 03–30932 Filed 12–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2002N–0278]

Guidance for Industry: Questions and Answers on the Interim Final Rule on Prior Notice of Imported Food; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Prior Notice of Imported Food, Questions and Answers.'' The guidance responds to various questions raised about the section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulations that require, beginning on December 12, 2003, prior notice to FDA before food is imported or offered for import into the United States.

DATES: Submit written or electronic comments on the agency guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Prior Notice Help Desk, phone 1–800–216–7331 or 301–575–0156, or Fax 301–210–0247. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Domenic Veneziano, Office of Regulatory Affairs (HFC–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 781–596–7785.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 10, 2003 (68 FR 58974), FDA issued an interim final rule to implement section 307 of the Bioterrorism Act. The prior notice regulations require, beginning on December 12, 2003, notification to FDA before food (including animal feed) is imported or offered for import into the United States. This guidance responds to questions raised about the interim final rule on prior notice, and it is intended to help the industry better understand and comply with the regulations.

FDA is issuing the guidance entitled ''Prior Notice of Imported Food, Questions and Answers'' as a Level 1 guidance. Consistent with FDA's good guidance practices regulation (21 CFR 10.115), the agency will accept comment, but it is implementing the guidance document immediately, in accordance with § 10.115(g)(2), because the agency has determined that prior public participation is not feasible or appropriate. FDA is under a strict statutory deadline in which to implement these regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to

be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www/cfsan.fda.gov/guidance.html*.

Dated: December 11, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–31038 Filed 12–12–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 1

[USCG–2003–16628]

Notice of Violation Program

AGENCY: Coast Guard, DHS.

ACTION: Notice of revised agency policy.

SUMMARY: The Coast Guard is expanding the scope of its Notice of Violation (NOV) program for resolving civil penalty cases as provided for in 33 CFR part 1, subpart 1.07. The Coast Guard will issue a revised policy expanding use of the NOV program to all statutory penalty provisions that the Coast Guard is authorized to enforce, and raising the maximum for proposed penalties under the NOV program to $10,000.

DATES: This revised policy is effective on January 5, 2004.

FOR FURTHER INFORMATION CONTACT: For further information on the use of the NOV program contact one of the persons listed below. For general questions, contact LCDR Scott Budka (G–MOA) U.S. Coast Guard by telephone at (202) 267–2026 or by electronic mail at *sbudka@comdt.uscg.mil.* For questions on application of the NOV program to U.S. vessels, contact LCDR Martin Walker (G–MOC) U.S. Coast Guard by telephone at (202) 267–1047 or by electronic mail at *mwalker@comdt.uscg.mil.* For questions on application of the NOV program to facilities, contact LCDR Phil Perry (G–MOC) U.S. Coast Guard by telephone at (202) 267–6700 or by electronic mail at *pperry@comdt.uscg.mil.* For questions on the application of the NOV program to outer continental shelf facilities, contact LCDR Eric Walters (G–MOC) U.S. Coast Guard by telephone at (202) 267–0499 or by electronic mail at *ewalters@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The Notice of Violation (NOV) program was implemented in 1995 to address the Coast Guard's concern that the civil penalty assessment process was too lengthy when applied to small (under 100 gallons) oil discharges and minor pollution prevention regulation violations (33 CFR parts 154, 155 and 156). The lengthy process time meant that a party frequently would have additional violations before being notified by a Hearing Officer of the initiation of action for the first violation. Early resolution of these minor violations saved time and reduced costs of internal reviews, improved deterrence, and facilitated corrective action by providing a party with earlier notice of violations.

In the Final Rule implementing the NOV program (59 FR 66482, Dec 27, 1994) we stated, ''The NOV option can be used by other Coast Guard programs that use the civil penalty process. Any program that implements use of the NOV option will do so by internal policy with prior notification to the public in the **Federal Register**.'' We are now publishing this notice to inform the public that we are expanding the NOV program by internal policy.

Since the NOV program's implementation, the Coast Guard has issued on average 2,300 NOVs annually for small oil spills and minor pollution prevention regulation violations. 95 percent of those NOVs were accepted by the responsible party, paid and the case closed. Because of the success of the initial limited NOV program, it is being expanded to include oil spills of 1,000 gallons or less and to include violations of other laws and regulations that the Coast Guard enforces.

An NOV may not be issued when the total proposed penalty for a violation exceeds $10,000. All laws and regulations that the Coast Guard enforces which contain a civil penalty provision are eligible for inclusion in the NOV program. Coast Guard issuing officers will issue a Notice of Violation with a proposed penalty only in clear-cut cases as determined by applying specific written guidance contained in a Commandant Directive, an internal Coast Guard policy document. A penalty schedule based on objective criteria will form an enclosure to the above Commandant Directive. Any case in which aggravating or extenuating circumstances are evidenced, or which concern violations not included in specific guidance documents, may be referred to the Hearing Officer for processing under the Coast Guard's current procedures as detailed in 33 CFR part 1, subpart 1.07.

This expansion will not change the alleged violator's options concerning the NOV as detailed in 33 CFR 1.07–11. The party has the option of paying the proposed penalty and closing the case or declining the NOV. If the NOV is declined, the case is processed as a Class I Administrative Civil Penalty and adjudicated by the Coast Guard Hearing Office. If the party fails to pay or decline the NOV within 45 days of receipt, the NOV is considered in default, the proposed penalty is considered assessed, and the case is forwarded to Commander, Maintenance & Logistics Command Pacific, Claims and Litigations (Collections) for collection of the penalty.

The NOV process does not preclude the Coast Guard from exercising its authority to utilize any other penalty, enforcement, control, or compliance measures authorized by law.

Dated: December 9, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–30916 Filed 12–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD08–03–029]

RIN 1625–AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule; notice of approval of revised collection of information.

SUMMARY: On October 3, 2003, the Coast Guard published an interim final rule in the **Federal Register** that established a regulated navigation area (RNA) within all inland rivers of the Eighth Coast Guard District and contained reporting requirements for barges loaded with certain dangerous cargoes. This document provides notice that the Office of Management and Budget (OMB) has approved the revised collection of information contained in that interim rule.

DATES: OMB approved the revised collection of information 1625–0105 on November 3, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding this document, or if you have questions on viewing or submitting material to the docket, write or call Commander (CDR) Jerry Torok or Lieutenant (LT) Kevin Lynn, Project Managers for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION: On October 3, 2003, the Coast Guard published an interim final rule entitled ''Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District'' in the **Federal Register** (68 FR 57358). In the preamble of that interim rule, we stated that we would publish a separate notice if and when OMB approved the revised collection of information (1625–0105) contained in the rule (68 FR 57363). On November 3, 2003, OMB announced that they had approved this revised collection of information.

Dated: December 1, 2003.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–30917 Filed 12–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–P–7630]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director of the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and record keeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Washington (Case No. 03–06–1948P).	Unincorporated Areas.	October 7, 2003, October 14, 2003, *Northwest Arkansas Times*.	The Honorable Jerry Hunton, Judge, Washington County, 280 North College Avenue, Suite 500, Fayetteville, AR 72701.	Jan. 13, 2004	050212
Washington (Case No. 03–06–1948P).	City of Fayetteville.	October 7, 2003, October 14, 2003, *Northwest Arkansas Times*.	The Honorable Dan Coody, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, AR 72701.	Jan. 13, 2004	050216
Illinois: Kendall (Case No. 03–05–0545P).	Village of Oswego.	October 23, 2003, October 30, 2003, *The Ledger-Sentinel*.	Mr. Craig Weber, President, Village of Oswego, 113 Main Street, Oswego, IL 60543.	Oct. 6, 2003	170345
Indiana:					
Lake (Case No. 03–05–5175P).	Town of Griffith ..	October 23, 2003, October 30, 2003, *The Times*.	The Honorable Stanley Dobosz, Town Council President, Town of Griffith, 111 North Broad Street, Griffith, IN 46319.	Jan. 29, 2004	185175
Lake (Case No. 03–05–5174P).	Town of Highland	October 23, 2003, October 30, 2003, *The Times*.	The Honorable Mark Herak, Town Council President, Town of Highland, 3333 Ridge Road, Highland, IN 46322.	Jan. 29, 2004	185176
Lake (Case No. 03–05–3366P).	Unincorporated Areas.	October 23, 2003, October 30, 2003, *The Times*.	The Honorable Gerry J. Scheub, President, Lake County Board of Commissioners, 2293 North Main Street, 3rd Floor, Building A, Crown Point, IN 46307.	Jan. 29, 2004	180126
Louisiana: East Baton Rouge Parish (Case No. 03–06–827P).	City of Zachary ..	October 16, 2003, October 23, 2003, *The Zachary Plainsman*.	The Honorable Charlene Smith, Mayor, City of Zachary, 4700 Main Street, Zachary, LA 70791.	Sept. 30, 2003	220061
Michigan: Macomb (Case No. 03–05–3367P).	City of Fraser	October 31, 2003, November 7, 2003, *The Macomb Daily*.	The Honorable Edmund T. Adamczyk, Mayor, City of Fraser, City Hall, 33000 Garfield Road, Fraser, MI 48026.	Oct. 17, 2003	260122
Minnesota: Carver (Case No. 02–05–0831P).	Unincorporated Areas.	October 23, 2003, October 30, 2003, *The Waconia Patriot*.	Mr. David Hemze, Acting Administrator, Carver County, Carver County Courthouse, 600 East Fourth Street, Chaska, MN 55318.	Jan. 29, 2004	270049
Missouri: St. Louis (Case No. 03–07–894P).	Unincorporated Areas.	October 22, 2003, October 29, 2003, *St Louis Post Dispatch*.	Mr. Buzz Westfall, St. Louis County Executive, 41 South Central Avenue, St. Louis, MO 63105.	Jan. 28, 2004	290327
New Mexico:					
Bernalillo (Case No. 03–06–1734P).	City of Albuquerque.	October 23, 2003, October 30, 2003, *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Oct. 9, 2003	350002
Bernalillo (Case No. 03–06–2528P).	Unincorporated Areas.	September 30, 2003, October 7, 2003, *Albuquerque Journal*.	Mr. Tom Rutherford, Chairperson, Bernalillo County, One Civic Plaza, N.W., Albuquerque, NM 87102.	Jan. 6, 2004	350001
Ohio: Lorain (Case No. 02–05–3235P).	City of Avon Lake.	October 9, 2003, October 16, 2003, *The Sun*.	The Honorable Robert Berner, Mayor, City of Avon Lake, 150 Avon Belden Road, Avon Lake, OH 44012.	Sept. 24, 2003	390602
Oklahoma:					
Tulsa (Case No. 03–06–1541P).	City of Tulsa	October 17, 2003, October 24, 2003, *Tulsa World*.	The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	Oct. 1, 2003	405381
Tulsa (Case No. 03–06–1945P).	City of Tulsa	October 24, 2003, October 31, 2003, *Tulsa World*.	The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	Oct. 9, 2003	405381
Texas:					
Johnson (Case No. 03–06–060P).	City of Burleson	October 22, 2003, October 29, 2003, *The Burleson Star*.	The Honorable Byron Black, Mayor, City of Burleson, 141 West Renfro, Burleson, TX 76028.	Jan. 28, 2004	485459

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dallas (Case No. 03–06–435P).	City of Carrollton	October 24, 2003, October 31, 2003, *Northwest Morning News*.	The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 E. Jackson Road, Carrollton, TX 75006.	Oct. 7, 2003	480167
Dallas (Case No. 02–06–2440P).	City of Cedar Hill	October 17, 2003, October 24, 2003, *Dallas Morning News*.	The Honorable Robert Franke, Mayor, City of Cedar Hill, P.O. Box 96, Cedar Hill, TX 75106.	Jan. 23, 2004	480168
Denton (Case No. 03–06–1926P).	Town of Flower Mound.	October 29, 2003, November 5, 2003, *Flower Mound Leader*.	The Honorable Lori DeLuca, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Oct. 15, 2003	480777
Tarrant (Case No. 02–06–2311P).	City of Fort Worth.	October 21, 2003, October 28, 2003 *The Star Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	Oct. 9, 2003	480596
Tarrant (Case No. 03–06–1376P).	City of Fort Worth.	October 22, 2003, October 29, 2003, *The Star Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	Oct. 7, 2003	480596
Denton (Case No. 03–06–435P).	City of Hebron ...	October 22, 2003, October 29, 2003, *The Carrollton Leader*.	The Honorable Kelly Clem, Mayor, Town of Hebron, 4216 Charles Street, Carrollton, TX 75010.	Oct. 7, 2003	481495
Tarrant (Case No. 03–06–444P).	City of North Richland Hills.	October 22, 2003, October 29, 2003 *The North East Tarrant County Morning News*.	The Honorable T. Oscar Trevino, Jr., Mayor, City of North Richland Hills, 7301 North East Loop 820, North Richland Hills, TX 76180.	Oct. 7, 2003	480607
Collin (Case No. 03–06–407P).	City of Plano	October 29, 2003, November 5, 2003 *Plano Star Courier*.	The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086–0358.	Feb. 4, 2004	480140
Hays (Case No. 02–06–1681P).	City of San Marcos.	October 17, 2003, October 24, 2003, *San Marcos Daily Record*.	The Honorable Robert Habingreither, Mayor, City of San Marcos, 630 East Hopkins, San Marcos, TX 78666.	Sept. 30, 2003	485505

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: December 9, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–30991 Filed 12–15–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR Part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM

available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified ◆Elevation in feet (NAVD) modified
AR	Cherokee Village (City) Sharp and Fulton Counties (FEMA Docket No. P7627).	Big Otter Creek	At confluence with South Fork Spring River.	*386
			Approximately 0.25 miles downstream of the primary Spillway of Lake Thunderbird.	*393
		Big Otter Creek Tributary	Approximately 74.0 feet upstream of confluence with Big Otter Creek.	*485
			Approximately 400 feet downstream of the dam at Lake Navajo.	*561
		Little Otter Creek	Approximately 0.8 mile upstream of the primary spillway of Lake Sequoyah.	*484
			Approximately 600 feet upstream of Lakeshore Drive.	*493
		Short Draft Branch	Approximately 1.7 miles upstream of South Fork Spring River.	*509
			Approximately 0.1 mile downstream of the primary spillway of Lake Chanute.	*516
		South Fork Spring River	Just downstream of Griffin Road	*371
			Approximately 5700 feet upstream of Cherokee Road.	*410

Maps are available for inspection at the City of Cherokee Village, 2 Santee Drive, Cherokee Village, Arkansas.

Dated: December 9, 2003.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–30992 Filed 12–15–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket 020626160–3217–04; I.D. 070203F]

RIN 0648–AQ13

Taking of Threatened or Endangered Species Incidental to Commercial Fishing Operations

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

ACTION: Final rule and technical correction.

SUMMARY: NMFS is issuing a final rule to prohibit fishing with drift gillnets in the California/Oregon (CA/OR) thresher shark/swordfish drift gillnet fishery in U.S. waters off southern California in waters east of the 120°W., for the months of June, July, and August, when the Assistant Administrator for Fisheries (AA) publishes a notice that El Nino conditions are forecasted or present off southern California. NMFS

has determined that the incidental take of loggerhead sea turtles by this fishery correlates to the area and season being fished during these oceanographic conditions. If implemented, this time and area closure will result in a reduction in the take of loggerhead turtles by the fishery and would be necessary to avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of the loggerhead turtle population.

DATES: This final rule is effective January 15, 2004.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) and biological opinion (BO) are available on the internet at *http://swr.nmfs.noaa.gov* or may be obtained from Cathy Campbell, Protected Resources Division, National Marine Fisheries Service, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, NMFS, Southwest Region, Protected Resources Division, (562) 980–4060.

SUPPLEMENTARY INFORMATION: All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). The loggerhead turtle (*Caretta caretta*) is listed as threatened. Under the ESA and its implementing regulations (50 CFR 223.205), taking threatened sea turtles, even incidentally, is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of threatened species may only be legally authorized by an incidental take statement in a biological opinion issued pursuant to section 7 of the ESA, an incidental take permit issued pursuant to section 10 of the ESA, or regulations under section 4(d) of the ESA. In order for an incidental take statement to be issued, the incidental take must be not likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat.

On October 24, 2000 (65 FR 64670, October 30, 2000), NMFS issued a permit, for a period of 3 years, to authorize the incidental, but not intentional, taking of four stocks of threatened or endangered marine mammals (Fin whale, California/Oregon/Washington stock; Humpback whale, California/Oregon/Washington-Mexico stock; Steller sea lion, eastern stock; and Sperm whale, California/Oregon/Washington stock) by the CA/OR drift gillnet fishery under section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(E)).

NMFS completed a formal consultation to authorize this incidental take of marine mammals listed under the ESA, as required by section 7 of the ESA. This consultation also included an analysis of the effects of the CA/OR drift gillnet fishery on loggerhead turtles. On October 23, 2000, NMFS issued a BO in which it determined that the then current operations of the CA/OR drift gillnet fishery were likely to jeopardize the continued existence of loggerhead turtles.

Measure to Reduce Loggerhead Turtle Entanglements

To avoid the likelihood of the CA/OR drift gillnet fishery jeopardizing the continued existence of loggerhead turtles, NMFS developed a Reasonable and Prudent Alternative (RPA) in the BO that consists of prohibiting CA/OR drift gillnet vessels from fishing in U.S. waters off southern California east of the 120°W. (in the area bounded by the California coastline to the north and east, the U.S.- Mexico border to the south, and the 120° W to the west), from August 15 through August 31, and January 1 through January 31, during a forecasted, or occurring, El Nino event. This measure would reduce the likelihood of the CA/OR drift gillnet fishery incidentally entangling loggerhead turtles by 71 percent. On September 20, 2002, NMFS published a proposed rule (67 FR 59243) to implement this RPA to protect loggerhead turtles. On December 24, 2002, NMFS published an interim final rule (67 FR 78388) that implemented the RPA to protect loggerhead turtles and solicited public comment on an alternative closure during the months of June, July, and August. In response to a request from the public to provide more time to review the loggerhead turtle entanglement data and the sea surface temperature data, NMFS extended the comment period from February 7, 2003, to March 24, 2003 (68 FR 7080, February 12, 2003).

Responses to Comments

The measures in this final rule are based in part on comments received on the proposed (see 67 FR 78388 December 24, 2002, for comments and responses) and interim final rules. NMFS received ten comments on the interim final rule. NMFS reviewed and considered all comments received in the development of this rule.

Comment 1: Several commenters believe that the CA/OR thresher shark/swordfish drift gillnet fishery, which has a very low take of loggerhead turtles, is not the cause of the decline in the population of loggerhead sea turtles and that closures in this fishery are not necessary.

Response: While NMFS recognizes that the CA/OR thresher shark/swordfish drift gillnet fishery has a low level of take of loggerhead turtles, the status of the loggerhead turtle population is sufficiently depleted that the impact of this fishery in addition to existing impacts resulted in a finding that the current operations of the CA/OR drift gillnet fishery were likely to jeopardize the continued existence of loggerhead turtles.

Comment 2: Several commenters supported a closure during June through August rather than in January and August 15 through 31 during El Nino conditions. They noted that the closure in June through August provided greater protection to loggerhead turtles than the RPA in the October 2000 BO, while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

Response: NMFS agrees and is implementing an alternate closure during the months of June, July, and August during El Nino conditions. As explained in the following section, NMFS conducted an analysis of observer data and recent fishing effort data and determined that a closure during June, July, and August during El Nino conditions provides greater protection for loggerhead turtles than the RPA in the October 2000 BO while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

Comment 3: One commenter suggested moving the northern boundary of the closed area south to 32°45′N. and the western boundary east to 119°30′W because there have been no loggerhead turtles observed taken outside this area.

Response: Although there have been no observed loggerhead turtles taken in ocean waters north of 32°45′N. during El Nino events or west of 119°30′W., this does not mean that loggerhead turtles are not present in this area. During El Nino events, NMFS has limited observer data for this area, with only 77 observed sets in the area east of 120°W. and north of 32°45′N. and 14 sets between 120°W. and 119°30′W. south of 32°45′N. Therefore, the lack of an observed take in this area may be the result of fewer observations in this area during the summer months of El Nino events. Sea surface temperatures show that the area east of the 120°W during El Nino conditions are comparable to the sea surface temperatures where loggerhead turtle entanglements were observed. In

addition, NMFS has received reports of strandings of loggerhead turtles and sightings of unidentified hard shell turtles in the area north of 32°45′N. during El Nino events. Sea surface temperature and stranding data indicate that loggerhead turtles are likely to be present in the area west of the 119°30′W. and north of 32°45′N. and that a closure in this area is warranted.

Comment 4: One commenter opposed any closure during the months of January or August.

Response: Under this final rule, NMFS will not be implementing a closure during January; however, NMFS will be implementing a closure in August during El Nino conditions, as a closure during August is essential to providing adequate protection to loggerhead turtles. As discussed in the response to Comment 2, NMFS is implementing a closure during June, July, and August in order to provide greater protection for loggerhead turtles than the level specified in the RPA in the October 2000 BO while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

Comment 5: One commenter noted that oceanographic conditions at Point Conception were not comparable with the areas in which the most northerly loggerhead turtle entanglement was observed (32°45′N) and that, therefore, the most northerly boundary of the closure should be 33°00′N, rather than the coast of California east of 120°W (which has a northerly boundary of 34°27′N). In addition, the commenter recommended the fishery should only be closed from August 16–31 during El Nino conditions, and should remain open during the month of January.

Response: Based on the sea surface temperature charts available on the NOAA Coastwatch West Coast Regional Node web page at *http://coastwatch.pfel.noaa.gov/*, sea surface temperatures in the area east of 120°W during El Nino conditions are comparable to the sea surface temperatures where loggerhead turtle entanglements were observed. NMFS agrees that the sea surface temperatures at Point Conception, which is outside the closure area, are generally lower than those seen in the area in which loggerhead turtle entanglements occurred. As explained in the response to Comment 3, NMFS believes that a northern boundary of 34°27′N will encompass an area where loggerheads are likely to occur during El Nino events.

NMFS' analysis of observer and fishing effort data shows that a closure during August 16–31 during El Nino conditions would not provide adequate protection to loggerhead turtles as required by the October 2000 BO. The closure (i.e., August 16–31 and January) required by the October 2000 BO is expected to result in the estimated reduction in take of 6 loggerhead turtles during El Nino years. A closure limited to the period of August 16–31 during El Nino years is expected to only result in a reduction in the estimated take of 3 to 4 loggerhead turtles. Thus, NMFS has determined that a closure during August 16–31 during El Nino years will not provide the level of protection required under the October 2000 BO. As discussed in the response to Comment 2, NMFS is implementing a closure during June, July, and August during El Nino conditions in order to provide greater protection to loggerhead turtles than the RPA in the October 2000 BO while causing less economic burden to the CA/OR thresher shark/swordfish drift gillnet fishery.

Comment 6: One commenter believed that NMFS' use of 3,000 sets as an estimate of annual fishing effort in the October 2000 BO was unrealistically high.

Response: At the time the BO was prepared, 3,000 sets was a reasonable estimate to predict future fishing effort based on a 3–year average using 1997, 1998, and 1999 data. NMFS is aware that fishing effort has continued to decline. As discussed in the following section, NMFS used a 3–year average of fishing effort using data from 1999 through 2001 to estimate future fishing effort in order to compare the alternative time/area closures to protect loggerhead turtles.

Comment 7: One commenter supported NMFS criteria for determining whether El Nino conditions are present along southern California for the purpose of implementing the time and area closure.

Response: NMFS has included these criteria in this final rule.

Comment 8: One commenter requested that NMFS continue its observer program at 20 percent coverage and continue its support for ongoing research on the distribution of sea turtles in the Pacific Ocean to determine which habitats and migratory routes these species use.

Response: NMFS intends to continue monitoring the CA/OR drift gillnet fishery targeting swordfish and thresher shark at 20 percent observer coverage and to continue its support for research on the distribution of sea turtles in the Pacific to determine which habitats and migratory routes they use.

Alternative Measure to Reduce Loggerhead Turtles Entanglements

The Pacific Offshore Cetacean Take Reduction Team recommended that NMFS implement a closure in June, July, and August, rather than during January and August 15 through 31, to reduce entanglement of loggerhead turtles. NMFS outlined this proposal in the interim final rule (67 FR 78388, December 24, 2002) and solicited comments on this alternative. As discussed in the previous section, NMFS received several additional comments on the interim final rule that favored the implementation of this alternative.

In response to these comments, NMFS conducted a review of observer data to determine whether an alternate closure in June, July, and August would offer the same or better protection than the closure during January 1 through 31 and August 15 through 31. The data used for this analysis are summarized in Table 1. NMFS reviewed observer data from the two most recent El Nino events (1992/1993 and 1997/1998) for the number of observed sets and the number of observed entanglements of loggerhead turtles that occurred during the months of January, June, July, and August, and used these data to calculate the average interaction rate for each of the two time periods. Future effort in the fishery for the two time periods was estimated by averaging fishing effort from 1999 through 2001. Using these data, NMFS estimated the number of loggerhead turtle entanglements that are expected to occur during each of the two time periods.

TABLE 1. COMPARISON OF EXPECTED LOGGERHEAD TURTLE ENTANGLEMENTS DURING ALTERNATE CLOSURE PERIODS

Closure Period	Observed Sets	Observed Entanglement	Catch Rate	Expected Average Fishing Effort (number of sets)	Expected Turtle Entanglement
Jun 1 - Aug 31	131	12	0.09	76	7
January + Aug 15–31	387	9	0.02	252	6

As illustrated in Table 1, the loggerhead turtle interaction rate is higher during June, July, and August (0.09 entanglements per set) than during January and August 15 through 31 (0.02 entanglements per set). However, the expected fishing effort, based on the average fishing effort from 1999–2001, is much lower in June, July, and August (76 sets) than during January and August 15 through 31 (252 sets). NMFS estimates that an average of 7 turtles would be taken during June, July, and August during El Nino conditions. By comparison, NMFS estimates that an average of 6 turtles would be taken during January and August 15 through 31. Thus, because of the higher entanglement rate during the June/July/August period, NMFS expects that a closure during this period will provide more protection to loggerhead turtles than a closure during January and August 15–31.

NMFS conducted an analysis to ensure that the June, July, and August closure period would avoid jeopardy for loggerhead turtles. The Incidental Take Statement in the 2000 BO stated that an observed take of 1 loggerhead turtle per El Nino year, extrapolated to an estimated mortality of 2 loggerhead turtles per El Nino year, would avoid jeopardy. NMFS' analysis of the June, July, and August closure period indicated that 6 loggerhead sea turtles would be captured per El Nino year outside of the closure period (e.g., September through May). Assuming that 32 percent of the captured loggerhead turtles would be killed (based on the survival rate of hard-shelled turtles caught by the CA/OR drift gillnet fleet from 1990–2000), NMFS estimated that 2 loggerhead turtles would be killed per El Nino year from September through May. Therefore the incidental mortality of loggerhead turtles that would be expected to occur with implementation of the June, July, and August closure period is consistent with the Incidental Take Statement and avoids jeopardy for loggerhead turtles.

As a result of this analysis, NMFS has concluded that implementation of the alternate closure in June, July, and August complies with the ESA because it provides at least the same level (and is expected to be greater) protection as the RPA identified in the BO.

Criteria for Determining El Nino Conditions

In order to determine whether El Nino conditions are present for the purposes of implementing this rule, NMFS is using the criteria outlined in the interim final rule (67 FR 78388, December 24, 2002). These criteria are outlined below.

For years in which an El Nino event has been declared by the NOAA Climate Prediction Center, NMFS uses the sea surface temperature anomaly charts available on the NOAA Coastwatch West Coast Regional Node web page at *http://coastwatch.pfel.noaa.gov/* and observer data on loggerhead turtle entanglements to determine whether El Nino conditions are present along southern California for the purpose of implementing the time and area closure identified in the October 2000 BO. NMFS uses the monthly sea surface temperature anomaly charts to determine whether there are warmer than normal sea surface temperatures present off of southern California during the months prior to the closure month for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. ''Normal sea surface temperatures'' is the average of the monthly mean sea surface temperatures for 1950–97.

All loggerhead turtles observed entangled in the CA/OR drift gillnet fishery during El Nino events were entangled during months in which the sea surface temperatures ranged from approximately 60°F to 72°F (15.6°C to 22.2°C) and sea surface temperatures differed from the average by approximately 0°F to +4°F (0°C to +2.2°C). The sea surface temperature during the month preceding each observed loggerhead entanglement was either greater than normal or equal to the normal sea surface temperature. The sea surface temperature during the third month and second month prior to each entanglement during an El Nino event was always greater than the normal sea surface temperature for that month. NMFS believes this is because warmer sea surface temperatures are necessary for loggerhead turtles to move into the area. There have been no observed entanglements in this fishery in which any one of the preceding 3 months were colder than normal.

Based on this information, the need to allow sufficient lead time to publish a notice in the **Federal Register** announcing El Nino conditions prior to the start date of the closure, and the fact that the sea surface temperature charts for a recently completed given month are not available until the following month, NMFS is using sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California. Thus, for years in which an El Nino event has been declared by the NOAA Climate Prediction Center, NMFS will evaluate sea surface temperatures for March and April to determine whether El Nino conditions in June will trigger a closure to conserve loggerhead turtles. Specifically, if an El Nino has been declared for equatorial waters and the sea surface temperatures off southern California during this 2–month time period are greater than normal, NMFS will publish a **Federal Register** notice with the determination that El Nino conditions are forecast off of southern California for the purpose of implementing the time and area closure to protect loggerhead turtles. If the sea surface temperatures are normal or below normal and the Assistant Administrator has previously published a **Federal Register** notice indicating that El Nino conditions are present off southern California, the Assistant Administrator will publish an additional **Federal Register** notice announcing that El Nino conditions are no longer present for purposes of implementing the closure.

Although the process for determining whether El Nino conditions are present for the purposes of implementing this rule was not set forth in the regulatory text of the interim final rule, it was outlined in the preamble to the interim final and comments were solicited on these criteria. NMFS has decided to make these criteria permanent by including them in the regulatory text of this final rule.

El Nino Determination for Summer 2003

NMFS has determined that El Nino conditions were neither forecasted nor present off southern California for purposes of implementing the time and area closure for June, July, and August 2003. This determination was based on the March, April, May, and June monthly sea surface temperature anomaly charts as well as actual sea surface temperatures. Based on the criteria outlined above, sea surface temperatures in both the third and second months prior to the closure would need to be warmer than normal in order to trigger the implementation of the closure. Sea surface temperature anomaly charts for March, May, and June 2003 show ocean waters off southern California to be normal to 0.9°F (0.5°C) cooler than normal. Thus, the U.S. waters off southern California, east to 120°W remained open to drift gillnet fishing in June, July, and August 2003.

El Nino Determination for Winter 2004

NMFS has determined that El Nino conditions are neither forecasted nor present off southern California for purposes of implementing a January 2004, time and area closure pursuant to

the December 24, 2002, Interim Final Rule (67 FR 78388). The October 2003 sea surface temperature anomaly chart indicates that sea surface temperatures off of southern California appear to be mostly normal with a narrow band of warmer than normal water (0.9°F (0.5°C) to 2.7°F (1.5°C)) near shore off of San Diego and extending down into Mexico along Baja California. Based on these sea surface temperatures, and sea surface temperature profiles during previous years in which there were observed loggerhead sea turtle captures during the month of January by the CA/OR drift gillnet fishery, the current oceanographic conditions along southern California do not appear to indicate that El Nino conditions are present, and therefore U.S. waters off southern California, east to 120°W remain open to drift gillnet fishing in January 2004. NMFS will continue to monitor El Nino conditions and accordingly determine whether to implement any future closures.

Technical Correction

In this final rule, NMFS is adding regulatory text to § 223.206(d)(6)(i) that establishes a Leatherback Conservation Area. That regulatory text was originally implemented through an August 24, 2001 (66 FR 44549) interim final rule but was inadvertently deleted from the Code of Federal Regulations because of faulty regulatory instructions in the December 2002 interim final rule.

Classification

NMFS prepared an EA (August 13, 2001), a supplement to the EA for the interim final rule (December 2002), and a revised supplement to the EA/RIR for this final rule and concluded that these regulations would have no significant impact on the human environment. For a description of the initial Regulatory Flexibility Analysis and a detailed economic analysis of the CA/OR drift gillnet fishery, readers should refer to the August 13, 2001, EA prepared for the proposed rule.

The economic analysis conducted for this final rule anticipates an impact of approximately 16 CA/OR drift gillnet vessel owners and operators, representing approximately 76 fishing sets annually. The total gross revenue loss to the CA/OR drift gillnet fleet resulting from the time and area closures in this final rule is expected to be $79,500 for an El Nino year. This estimate is based on California Department of Fish and Game landing receipts for the period from June 1 through August 31, using data from 1997 to 2000. This revenue loss to the fishery is a worst-case scenario based on the assumption that none of the fishing effort will shift to ocean areas that remain open to fishing. Based on 2001 fishing effort data, the reduction in total gross revenues is not expected to exceed $4,970 per vessel per El Nino year. On average, during these time periods, approximately $3,000 of louvar, $11,100 of mako shark, $3,000 of opah, $23,900 of swordfish, and $38,500 of thresher shark are landed. NMFS did not receive comments on the detailed economic analysis and alternatives on the August 2001 EA prepared for this final rule. The El Nino closure that would have been imposed under the December 24, 2002, interim final rule was expected to result in a total gross revenue loss of $440,000 and was expected to impact 500 sets per El Nino year. This final rule minimizes the negative economic impact to the fishery, while maintaining necessary protection for listed sea turtles, by reducing the total gross revenue loss by approximately 82 percent.

In addition to the time and area closures identified in this final rule, NMFS examined several alternatives for reducing or eliminating sea turtle entanglements when developing measures to avoid the incidental take of sea turtles. NMFS searched for a strategy that would provide the most certainty in reducing or eliminating entanglements upon implementation. These strategies included: (1) reducing fishing effort through gear modifications; (2) reducing fishing effort by decreasing the number of vessels; (3) increasing survival of entangled sea turtles; (4) implementing gear modifications to reduce interactions; and (5) changing fishing practices such as shorter soak times. These alternatives were analyzed in detail in the August 13, 2001, EA prepared for the proposed rule. They were not considered further because data are insufficient to determine whether these alternatives would avoid the likelihood of jeopardizing the continued existence of the loggerhead sea turtle as required by section 7(b) of the ESA. NMFS analyzed the patterns of loggerhead sea turtle captures and mortalities in the CA/OR drift gillnet fishery. Based on this assessment, NMFS found that the most effective method of avoiding loggerhead interactions and mortality is a time/area closure during El Nino years (anticipated reduction in interactions is approximately 92 percent). NMFS found no apparent correlation between variations in fishing strategy and loggerhead sea turtle interactions and determined that modifications in gear or gear deployment are not likely to achieve significant or measurable reductions in the capture and mortality rate of these turtles.

This final rule does not contain collection-of-information requirements subject to the Paperwork Reduction Act.

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

A BO on the issuance of a marine mammal permit under section 101(a)(5)(E) of the MMPA was issued on October 23, 2000. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of loggerhead turtles. That BO concluded that issuance of a permit and continued operation of the CA/OR drift gillnet fishery was likely to jeopardize the continued existence of leatherback (Dermochelys coriacea) and loggerhead sea turtles. This final rule implements an alternative to the RPA in the BO to protect loggerhead sea turtles. NMFS has determined that the alternative implemented by this final rule is more protective of loggerhead sea turtles than the RPA in the BO. NMFS, which issued the BO, has concurred that this alternative would provide more protection than the RPA identified in the BO and would avoid the likelihood of jeopardizing the continued existence of the loggerhead sea turtle. This alternative does not change the conclusions of the BO related to marine mammals listed under the ESA. Moreover, this final rule will have no adverse impacts on marine mammals that are not listed under the ESA.

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with the States of California and Oregon regarding the implementation of the RPA. Both California and Oregon have expressed support for the measures identified in the BO for the protection of leatherback and loggerhead sea turtle species. NMFS intends to continue engaging in informal and formal contacts with the States of California and Oregon during the implementation of this RPA and development of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: December 8, 2003.

Rebecca Lent,

Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 is amended to read as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.102 also issued under 16 U.S.C. 1361 *et seq.*

■ 2. In § 223.206(d), paragraph (d)(6) is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

(d) * * *

(6) *Restrictions applicable to the California/Oregon drift gillnet fishery*—(i) *Pacific leatherback conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean from August 15 through November 15 in the area bounded by straight lines connecting the following coordinates in the order listed:

(A) Point Sur (36°18.5′ N) to 34°27′ N 123°35′ W;

(B) 34°27′ N 123°35′ W to 34°27' N 129° W;

(C) 34°27′ N 129° W to 45°N 129° W;

(D) 45° N 129° W to the point 45° N intersects the Oregon coast.

(ii) *Pacific loggerhead conservation area.* No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. from June 1 through August 31 during a forecasted, or occurring, El Nino event off the coast of southern California (as determined under paragraph (d)(6)(iii) of this section).

(iii) *Determination and notification concerning an El Nino event.* The Assistant Administrator will publish in the **Federal Register** a notification that an El Nino event is occurring off of, or is forecast for, the coast of southern California and the imposition of a closure under paragraph (d)(6)(ii) of this section. Furthermore, the Assistant Administrator will announce the imposition of such a closure by other methods as are necessary and appropriate to provide actual notice to the participants in the California/Oregon drift gillnet fishery. The Assistant Administrator will rely on information developed by NOAA offices which monitor El Nino events, such as NOAA's Climate Prediction Center and the West Coast Office of NOAA's Coast Watch program, in order to determine whether an El Nino is forecasted or occurring for the coast of southern California. The Assistant Administrator will use the monthly sea surface temperature anomaly charts to determine whether there are warmer than normal sea surface temperatures present off of southern California during the months prior to the closure month for years in which an El Nino event has been declared by the NOAA Climate Prediction Center. Specifically, the Assistant Administrator, will use sea surface temperature data from the third and second months prior to the month of the closure for determining whether El Nino conditions are present off of southern California. If an El Nino has been declared for equatorial waters and the sea surface temperatures off southern California during this 2–month time period are greater than normal, the Assistant Administrator will publish in the **Federal Register** notification that an El Nino event is occurring off of, or is forecast for, the coast of southern California and the imposition of a closure under paragraph (d)(6)(ii) of this section. If the sea surface temperatures are normal or below normal and the Assistant Administrator has previously published a **Federal Register** notice indicating that El Nino conditions are present off southern California, the Assistant Administrator will publish an additional **Federal Register** notice announcing that El Nino conditions are no longer present for purposes of implementing the closure. The area closure imposed under this paragraph (d)(6) will remain in effect until the Assistant Administrator files with the Office of the Federal Register a notice that the El Nino event is no longer occurring.

* * * * *

[FR Doc. 03–30919 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–3309–04; I.D. 120903E]

RIN 0648–AQ04

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,356 square nautical miles (nm2) (4,651 km2), east of Portsmouth, NH for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours December 18, 2003, through 2400 hours January 2, 2004.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401 x171.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). On

August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On December 4, 2003, an aerial-based survey reported a sighting of five right whales in the proximity of 42° 42.1′ N lat. and 70° 02.2′ W long. This position lies east of Portsmouth, NH. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. Pursuant to this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. Because the December 4 right whale sightings occurred within the area included in a previous DAM zone triggered by the November 7, 2003, vessel-based sighting of four right whales (68 FR 65409, November 20, 2003), the coordinates for the current DAM zone will encompass the same area, which is bound by the following coordinates:

43°09′N, 70°26′W (NW Corner)
43°09′N, 69°36′W
42°32′N, 69°36′W
42°32′N, 70°26′W

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends; and
5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours December 18, 2003, through 2400 hours January 2, 2004, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final Environmental Assessments prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this notice in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

This temporary rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: December 10, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–30995 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 120903A]

Atlantic Highly Migratory Species; Bluefin Tuna Fisheries

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

ACTION: General category closure.

SUMMARY: NMFS has determined that the 2003 fishing year Atlantic bluefin tuna (BFT) General category quota will be attained by December 10, 2002. Therefore, the General category fishery will be closed effective 11:30 p.m. on December 10, 2003. This action is being taken to prevent overharvest of the total adjusted General category quota of 534.4 metric tons (mt).

DATES: Effective 11:30 p.m. local time on December 10, 2003, through May 31, 2004.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, and together with General category effort controls are specified annually under 50 CFR 635.23(a) and 635.27(a). The final initial 2003 BFT Quota and General category effort controls were published on October 2, 2003 (68 FR 56783).

General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the

Federal Register for publication, notification of closure when a BFT quota is reached, or is projected to be reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period, or until such date as specified in the notification.

The 2003 BFT quota specifications issued pursuant to § 635.27 set a General category quota of 684.4 mt of large medium and giant BFT to be harvested from the regulatory area during the 2003 fishing year, and divided the General category quota into time-period subquotas. On November 18, 2003, NOAA Fisheries transferred 150 mt to the Reserve category, establishing an adjusted coastwide General category quota of 534.4 mt for the 2003 fishing year (68 FR 64990, November 18, 2003). Based on reported landings and effort, NMFS projects that the adjusted quota will be reached by December 10, 2003. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT intended for sale by persons aboard vessels in the General or HMS Charter/Headboat categories must cease at 11:30 p.m. local time December 10, 2003. The intent of this closure is to prevent overharvest of the adjusted quota established for the General category.

If it is determined that quota remains uncaught in the General category, or if additional quota can be made available to the General category through an inseason transfer, NMFS will announce the re-opening and/or transfer action in a separate **Federal Register** notice. General category and HMS Charter/Headboat permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26.

Classification

Pursuant to 5 U.S.C. 553 (b) (B), the Assistant Administrator for Fisheries, NOAA (AA), finds that providing for prior notice and public comment for this action is impracticable and contrary to the public interest. Based on recent landings reports, this closure is necessary to prevent the overharvest of the adjusted BFT quota established for the coastwide General category. The fishery is currently underway, and any further delay in this action would cause the fishery to exceed the quota and be inconsistent with domestic and international requirements and objectives. NMFS provides notification of the closure by publishing the closure notice in the **Federal Register**, faxing notification to individuals on the HMS FAX Network and to known fishery representatives, announcing the notice on the Atlantic Tunas Information Line, and announcing the closure notice over NOAA Weather and Coast Guard radio channels. For these same reasons, the AA also finds good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553 (d)(3). This action is required under 50 CFR 635.28(a) (1) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 9, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30914 Filed 12–10–03; 3:50 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030908223–3289–02; I.D. 081403B]

RIN 0648–AP57

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan

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

ACTION: Final rule; implementation of Amendment 13 to the Surfclam and Ocean Quahog Fishery Management Plan (FMP).

SUMMARY: NMFS implements measures contained in Amendment 13 to the FMP (Amendment 13). Amendment 13 establishes: A new surfclam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system (VMS), when such a system is economically viable; the ability to suspend or adjust the surfclam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on Essential Fish Habitat (EFH) for surfclams and ocean quahogs. This final rule includes technical corrections to the regulations implementing the FMP in order to clarify the Mid-Atlantic Fishery Management Council's (Council) intent not to restrict allocation ownership to only those entities that also own a permitted vessel, and to eliminate the restriction on the transfer of allocation tags of amounts less than 160 bushels (bu) (85 hectoliters (hL)) (i.e., 5 cage tags). The primary purpose of Amendment 13 is to rectify the disapproved surfclam overfishing definition and the EFH analysis and rationale contained in Amendment 12 in order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to simplify the regulatory requirements of the FMP.

DATES: Effective January 15, 2004.

ADDRESSES: Copies of the Amendment 13 document, including the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Impact Statement (EIS), and other supporting documents for the amendment are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Supervisory Fishery Policy Analyst, 978–281–9252, fax 978–281–9135, *Susan.A.Murphy@noaa.gov*.

SUPPLEMENTARY INFORMATION: This final rule implements approved measures contained in the FMP, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on November 21, 2003.

Details concerning the justification for and development of Amendment 13 and the implementing regulations were provided in the preamble to the proposed rule (68 FR 55358, September 25, 2003) and are only summarized here.

Background

Amendment 12 to the FMP was prepared by the Council to bring the FMP into compliance with the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996. On April 28, 1999, the Council was

notified that NMFS partially approved Amendment 12. Two Amendment 12 measures were disapproved, the surfclam overfishing definition and the analysis and rationale for the status quo alternative for addressing fishing gear impacts to EFH. To rectify these disapprovals, the Council prepared, and NMFS published, a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register**, officially beginning the Council's scoping process for Amendment 13 (66 FR 13694, March 7, 2001). During this scoping process, other issues were identified for inclusion in the EIS, including: Multi-year quotas, a mandatory VMS requirement, and a permanent suspension of the surfclam minimum size limit.

The Amendment 13 measures implemented through this rule are multi-year fishing quotas and the ability to suspend or adjust the surfclam minimum size limit through a framework adjustment. The analysis of fishing gear impacts on EFH for surfclams and ocean quahogs, a new surfclam overfishing definition, and a mandatory VMS requirement are not accompanied by regulatory text because either they are non-regulatory in nature (fishing gear impacts on EFH and the new overfishing definition) or implementation is deferred (a mandatory VMS requirement). However, information on these measures was presented in the preamble of the proposed rule and is only summarized below.

Surfclam Overfishing Definition

The revised surfclam overfishing definition recommended by the Council and implemented through this final rule is based on the advice of the 30th Stock Assessment Workshop (SAW 30, April 2000), which incorporated the results of a research survey that took place during the summer of 1999. This surfclam overfishing definition is as follows: Biomass target (B_{target}) = ½ of current (1999) biomass (as a proxy for the biomass level at maximum sustainable yield (B_{msy})) = 1,268,500 mt; biomass threshold ($B_{threshold}$) = ½ the biomass target; fishing mortality threshold ($F_{threshold}$) = fishing mortality at maximum sustainable yield (F_{msy}), where the current proxy for F_{msy} is the natural mortality rate for surfclams (M); and the fishing mortality target (F_{target}) would always be set less than the $F_{threshold}$ and would be equivalent to the fishing mortality rate (F) associated with the quota selected by the Council.

Fishing Gear Impacts on EFH

The relatively recent ''Workshop on the Effects of Fishing Gear on Marine Habitats off the Northeastern United States'' (Workshop, October 2001) concluded that the effects of hydraulic clam dredges were limited to sandy substrates, since this type of gear is not used on muddy or gravel substrates and that overall impacts can be considered minimal. Based on information from this Workshop, NMFS is not taking any action to mitigate fishing gear impacts on EFH.

Multi-year Quotas

Beginning in 2005, Amendment 13 replaces the current annual specification process with a process that allows the Council to establish specifications to be in effect for up to 3 fishing years, provided that an annual evaluation of the surfclam and ocean quahog status is undertaken. This multi-year specification process allows the Council and NMFS to be more efficient by streamlining the regulatory process, and provides the industry with greater regulatory consistency and predictability. The maximum 3–year specification process is not meant to constrain the Council from setting specifications during the interim years if information obtained during the annual review indicates that the surfclam or ocean quahog specifications warrant a change, e.g., to comply fully with the Magnuson-Stevens Act.

Mandatory VMS

Amendment 13 lays the groundwork to implement a mandatory VMS requirement based on analysis provided by the Council and the agreement by NMFS that the system is economically viable. Upon such agreement, the Council would submit to NMFS the applicable paperwork to conform with the Paperwork Reduction Act, and submit a full economic analysis pertaining to this new requirement. Once these Council submissions are complete, NMFS will publish a proposed rule followed by a final rule that will evaluate the likely costs and benefits of any proposed VMS program. The public will have an opportunity to comment on all aspects of the proposed VMS program during the rulemaking stage.

Frameworkable Measures

This rule adds to the list of frameworkable management measures the ability to suspend or adjust the surfclam minimum size limit. Due to concerns expressed by some industry members, as well as Council concern that it may be more difficult to implement a change rather than to suspend a current provision, the Council voted, and NMFS agrees, to maintain the no action alternative and add to the list of frameworkable management measures the ability to suspend or adjust the surfclam minimum size limit.

Comments and Responses

The comment periods on the FMP and proposed rule ended on October 23, 2003, and October 27, 2003, respectively. All comments received have been considered as responsive to both comment requests. Three comments were received prior to the close of the comment periods.

Comment 1: Two letters were received expressing ''no comment'' regarding Amendment 13. A response received from the U.S. Coast Guard First Coast Guard District indicated that, while the First District had no comment on the Amendment, it would defer input on enforcement and safety issues to the Fifth Coast Guard District. The Fifth Coast Guard District did not have any vessel safety or enforcement concerns with Amendment 13.

Response: NMFS acknowledges that the U.S. Coast Guard did not express any vessel safety or enforcement concerns with Amendment 13.

Comment 2: One comment raised several issues related to the measures implemented under this FMP. The comment stated that, for any multi-year fishing quotas, quotas should be drastically reduced. The commenter also suggested that any VMS required by NMFS should be supplied by the Agency, and suggested that marine protected areas (MPAs) should be established.

Response: The multi-year quotas proposed under Amendment 13 would be required to comply fully with the Maguson-Stevens Act and would be established by the Council based upon the latest Northeast Fisheries Science Center clam survey and stock assessment, as well as any additional information that becomes available between stock assessments. NMFS believes that VMS units are a cost of conducting business and should be borne by the industry. Finally, the area most affected by the surfclam and ocean quahog industry operations is high-energy sandy areas that are only temporarily impacted by fishing operations under this FMP. As such, there is no immediate need for MPAs as a result of this fishery.

Changes from the Proposed Rule

This final rule includes changes to the regulations implementing the FMP.

These changes are intended to reflect the Council's intent not to restrict allocation ownership to only those entities that also own a permitted vessel, and to eliminate the restriction on the trade of allocation tags of amounts less than 160 bu (85 hL) (5 cage tags).

Amendment 8 to the FMP established the individual transferrable quota (ITQ) program for the Atlantic surfclam and ocean quahog fisheries in 1990. Amendment 8 states that there are ''no restrictions on the permissible use of the quota.'' However, the regulations implementing Amendment 8 refer to the vessel owner as the individual to whom an allocation is issued. This language reflects the fact that the initial allocations were made to vessel owners. Subsequent to the initial allocation, and as contemplated by Amendment 8, some allocation holders sold their vessels or transferred allocation to individuals who did not own a vessel. This final rule changes this provision at 50 CFR 648.70(a) by specifying that the allocation for each fishing year will be allocated to the allocation owner as of the last day of the fishing year that allocation owners are allowed to permanently transfer their allocation (October 15).

The regulation prohibiting the transfer of allocation in amounts less than 160 bu (85 hL) (5 cage tags) was originally intended to reduce the administrative burden on NMFS. However, this regulation has inadvertently placed an undue burden on some vessels, particularly those in the Maine mahogany quahog fishery who chose to participate in the ITQ program, by preventing them from transferring less than 160 bu (85 hL) (5 cage tags) at any time. This regulation has also limited the activities of allocation owners within the Mid-Atlantic region, and may prevent some allocation owners from fully utilizing their allocations. Since the implementation of the ITQ program in 1990, computer programs have reduced the administrative burden such that this restriction is no longer necessary. This modification to the final rule eliminates the 160–bu (85–hL) restriction specified at 50 CFR 648.70(b) and allows participants to transfer allocation in any amount, including transfers of allocation in amounts less than 160 bu (85 hL), and would reduce the economic impact to and regulatory burden on participants in the ITQ program.

Classification

The Administrator, Northeast Region, NMFS, determined that the FMP amendment implemented by this rule is necessary for the conservation and management of the Atlantic surfclam and ocean quahog fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

Included in this final rule is the FRFA that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Comments received prior to the close of the comment period for the proposed rule focused on the measures contained within Amendment 13 and did not reference the analysis contained in the IRFA. Although one commenter stated that NMFS should pay for the cost of VMS units, the requirement to utilize VMS is not being mandated through this rule. Once NMFS determines the economic feasibility of a VMS system, NMFS will inform the public of the likely costs. However, at this time, NMFS believes that use of a VMS is a cost of doing business and should be borne by the industry. For a summary of the comments received, refer to Comments and Responses.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is only summarized here.

All of the affected businesses (fishing vessels) are considered small entities under the standards described by the Small Business Administration because they have annual returns (revenues) that do not exceed $3.5 million annually. This rule could affect any vessel holding an active Federal permit for either species. However, the commercial use of the permit is limited to vessels fishing under an individual fishing quota or fishing in the Maine mahogany fishery. In 2001, there were 51 vessels that landed either surfclams (21 vessels), ocean quahogs (16 vessels), or both (14 vessels). There were 31 vessels in 2001 that fished under the federal limited access Maine mahogany quahog permit for Maine ocean quahogs.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no recordkeeping, reporting, or other compliance costs forthcoming from this action.

Steps Taken to Minimize Economic Impacts on Small Entities

Management measures contained in this rule would establish multi-year quotas and add the suspension of the surfclam minimum size limit and adjustment of the minimum size to the list of frameworkable measures under the FMP. None of the management measures in this rule would result in a substantial change in revenues or profitability of vessels comprising these fisheries. Although additional alternatives were considered for these management measures, the preferred alternative would minimize economic impacts to the greatest extent possible.

Overfishing Definition for Surfclams

The proposal to revise the overfishing definition for surfclams does not alter the optimum yield of the fishery, a basis for determining annual quotas, and does not directly impact gross revenues. Therefore, no change to gross revenues is expected from this revision. However, an initial regulatory flexibility analysis must be prepared at the time when quotas or other management measures that control landings are proposed through a general notice of proposed rulemaking. The NMFS considered three alternative overfishing definitions, none of which would meet the requirements of National Standard 1 of the Magnuson-Stevens Act. These alternative definitions included the following: (1) The disapproved definition from Amendment 12; (2) The pre-Sustainable Fisheries Act Amendment 9 definition; and (3) The Amendment 8 estimate of MSY at 2.9 million bushels (approximately 50 million pounds of shucked meats) for the Mid-Atlantic portion of the resource. As in the case of the preferred alternative, none of these alternatives would directly affect the profitability of individual vessels.

Multi-year Quotas and Frameworkable Minimum Size Limits and Adjustments for Surfclams

The establishment of multi-year quotas and frameworkable minimum size limits and adjustments for surfclams through this final rule are purely administrative and will not directly impact gross revenues. However, the Council and NMFS will be required to prepare an initial regulatory flexibility analysis for each quota set by the Council and for each surfclam minimum size limit adjustment, if applicable, when a notice of proposed rulemaking is developed.

The NMFS considered two alternatives to the multi-year quota measure including the status quo and an alternative that would set multi-year quotas without annual review. The Council also considered two alternatives to the minimum size limits and adjustments including the status quo and an alternative to adjust minimum sizes when the multi-year decisions occur. As explained above, any changes to annual quotas or adjustments to surfclam minimum size that could result from any alternatives considered would require, subject to the preparation of a proposed rule, preparation of regulatory flexibility analyses at that time.

Mandatory VMS

This final rule does not implement a mandatory VMS program at this time. However, the Council is planning to establish a vessel monitoring program at a later time. When the Regional Administrator determines that an economically viable monitoring system is available to the industry, the Council and NMFS must prepare an IRFA that fully examines the compliance costs associated with that system. A mandatory VMS requirement would be implemented through proposed and final rulemaking by a regulatory amendment.

Fishing Gear Impacts on EFH

This rule implements no changes to existing management measures to address fishing gear impacts on EFH. Therefore, there are no impacts on vessel gross revenues resulting from this aspect of Amendment 13.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam and ocean quahog fishery permits. The guide will also be available on the Internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: December 9, 2003.

John Oliver,

Deputy Assitant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.70, paragraphs (a)(1), (b)(1) and (b)(2) are revised to read as follows:

§ 648.70 Annual individual allocations.

(a) * * *

(1) On or about November 1 of each fishing year, the Regional Administrator shall determine the initial allocation of surfclams and ocean quahogs for the next fishing year for each allocation holder owning an allocation pursuant to paragraph (a)(2) of this section. For each species, the initial allocation for the next fishing year is calculated by multiplying the allocation percentage owned by each allocation owner as of the last day of the previous fishing year in which allocation owners are permitted to permanently transfer allocation percentage pursuant to paragraph (b) of this section (i.e., October 15 of every year), by the quota specified by the Regional Administrator pursuant to § 648.71. The total number of bushels of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number, and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number, so that allocations are specified in whole cages. These allocations shall be made in the form of an allocation permit specifying the allocation percentage and the allocation in bushels and cage tags for each species. An allocation permit is only valid for the entity for which it is issued. Such permits shall be issued on or before December 15, to allow allocation owners to purchase cage tags from a vendor specified by the Regional Administrator pursuant to § 648.75(b).

* * * * *

(b) * * *

(1) *Allocation percentage*. Subject to the approval of the Regional Administrator, part or all of an allocation percentage may be transferred in the year in which the transfer is made, to any person or entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags*. Cage tags issued pursuant to § 648.75 may be transferred at any time, and in any amount subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year. The transfer is effective upon the receipt by the transferee of written authorization from the Regional Administrator.

* * * * *

■ 3. Section 648.71 is revised to read as follows:

§ 648.71 Catch quotas.

(a) *Establishing quotas*. Beginning in 2005, the amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for a 3–year period by the Regional Administrator on or about December 1, 2004. The initial 3–year specification will be based on the most recent available survey and stock assessments for Atlantic surfclams and ocean quahogs. Subsequent 3–year

specifications of the annual quotas will be accomplished on or about December 1 of the third year of the quota period, unless the quotas are modified in the interim pursuant to § 648.71(b). The amount of surfclams available for harvest annually must be specified within the range of 1.85 to 3.4 million bu (98.5 to 181 million L) per year. The amount of ocean quahogs available for harvest annually must be specified within the range of 4 to 6 million bu (213 to 319.4 million L).

(1) *Quota reports*. On an annual basis, MAFMC staff will produce an Atlantic surfclam and ocean quahog annual quota recommendation paper to the MAFMC based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a 3–year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP within the ranges specified for a 3–year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the OY.

(ii) Fishing mortality rates relative to the OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(2) *Public review*. Based on the recommendation of the MAFMC, the Regional Administrator shall publish proposed surfclam and ocean quahog quotas in the **Federal Register**. Comments on the proposed annual quotas may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the **Federal Register** on or about December 1 of each year. The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surfclam and Ocean Quahog FMP. The Regional Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson-Stevens Act and the objectives of the Atlantic Surfclam and Ocean Quahog FMP and other applicable law.

(b) *Interim quota modifications*. Based upon information presented in the quota reports described in paragraph (a)(1) of this section, the MAFMC may recommend to the Regional Administrator a modification to the annual quotas that have been specified for a 3–year period and any estimate of DAH or DAP made in conjunction with such specifications within the ranges specified in paragraph (a)(1) of this section. Based upon the Council's recommendation, the Regional Administrator may propose surfclam and or ocean quahog quotas that differ from the annual quotas specified for the current 3–year period. Such modification shall be in effect for a period of 3 years from the year in which it is first implemented, unless further modified. Any interim modification shall follow the same procedures for establishing the annual quotas that are specified for a 3–year period.

(c) *Annual quotas*. The annual quotas for surfclams and ocean quahogs will remain effective unless revised pursuant to this section. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

* * * * *

■ 4. In § 648.75, paragraph (b) is revised to read as follows:

§ 648.75 Cage identification.

* * * * *

(b) *Issuance*. The Regional Administrator will issue a supply of tags to each individual allocation owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year, or he/she may specify, in the **Federal Register**, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's initial allocation as specified in § 648.70(a). Each tag represents 32 bu (1,700 L) of allocation.

* * * * *

■ 5. In § 648.77, paragraph (a)(1) is revised to read as follows:

§ 648.77 Framework adjustments to management measures.

(a) * * *

(1) *Adjustment process*. The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels), description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set-aside quota for scientific research, VMS, OY range, and suspension or adjustment of the surfclam minimum size limit.

* * * * *

[FR Doc. 03–30923 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031009255–3302–02; I.D. 092503A]

RIN 0648–AQ88

Fisheries of the Exclusive Economic Zone Off Alaska; Revision to the Management of ''Other Species'' Community Development Quota

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to modify the management of the ''other species'' Community Development Quota (CDQ) reserve by eliminating specific allocations of ''other species'' CDQ to individual CDQ managing organizations (CDQ groups) and, instead, allowing NMFS to manage the ''other species'' CDQ reserve with the general limitations used to manage the catch of non-CDQ groundfish in the Bering Sea and Aleutian Islands management area (BSAI). This action also eliminates the CDQ non-specific reserve and makes other changes to improve the clarity and consistency of CDQ Program regulations. This action is necessary to improve NMFS' ability to effectively administer the CDQ Program. It is intended to further the goals and objectives of the North Pacific Fishery

Management Council (Council) with respect to this program.

DATES: Effective December 15, 2003, except for amendments to §§ 679.2, 679.7, the introductory paragraph to 679.31, and 679.32 which are effective January 15, 2004.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228 or *Obren.Davis@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI are managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Regulations codified at 50 CFR part 679 implement the multispecies CDQ Program, a limited access system that provides exclusive harvesting privileges to a portion of the total allowable catches for halibut, crab and groundfish to eligible western Alaska communities. The purpose of this program is to provide the means for starting or supporting commercial fisheries business activities that will result in ongoing, regionally based, fisheries-related economic benefits for residents of eligible communities. NMFS allocates varying amounts of commercially valuable CDQ target species to CDQ groups each year. The harvest of these species provides a financial means for CDQ groups to fund economic development projects in support of overall program objectives.

This action would modify the management of the ''other species'' CDQ reserve and amend regulations to distinguish between the management of those groundfish CDQ reserves that are allocated to CDQ groups and those that are not. The ''other species'' complex is comprised of various species of sharks, skates, sculpins, and octopi. These species are incidentally caught with CDQ target species such as pollock, Pacific cod, sablefish, Atka mackerel, and flatfish. Exceeding an annual CDQ allocation results in an enforcement action against a CDQ group, which may include monetary or other penalties. To avoid exceeding their ''other species'' allocations, CDQ groups may have to modify their fishing practices by fishing in new or different locations or ceasing to fish for some target species. Failing to completely harvest CDQ target species allocations has an economic impact on CDQ groups and the CDQ communities when revenues are foregone, which may adversely affect the accomplishment of projects intended to foster economic development in western Alaska communities.

Under this action the ''other species'' CDQ reserve would still be established annually, but would no longer be allocated to CDQ groups. All catch of ''other species'' in the groundfish CDQ fisheries would accrue towards this reserve, rather than towards specific allocations to individual CDQ groups. Eliminating individual ''other species'' allocations would eliminate the potential that some CDQ target allocations would be unharvested for lack of ''other species'' bycatch, or that groups would incur enforcement actions for exceeding an annual ''other species'' CDQ allocation. Some CDQ groups receive allocations of ''other species'' CDQ that are not necessarily proportionate to the amount CDQ target species they are allocated, while other groups receive adequate amounts or even have surplus ''other species'' remaining at the end of each year. NMFS would manage the ''other species'' CDQ reserve as a whole with management measures in § 679.20(d). These measures provide the means to manage the catch of ''other species'' in both the CDQ and non-CDQ groundfish fishery.

This final rule makes the following changes to CDQ Program regulations: (1) amends the content and headings of definitions associated with the CDQ Program; (2) revises a prohibition associated with calculating maximum retainable amounts of CDQ catch; (3) amends the introductory paragraph that discusses CDQ reserves; (4) amends regulations to distinguish how NMFS will manage groundfish CDQ reserves apportioned to CDQ groups and how it will manage groundfish CDQ reserves that are not apportioned to CDQ groups; (5) amends regulations to specify that the ''other species'' CDQ reserve, is not allocated among CDQ groups; (6) amends regulations to allow NMFS to manage the ''other species'' CDQ reserve with fishery management measures typically used in non-CDQ fisheries; (7) amends regulations to describe how NMFS will apply CDQ percentage allocations to revised total allowable catch (TAC) categories that may arise from the annual groundfish harvest specifications process; and (8) amends catch monitoring requirements to align them with revisions to CDQ-related definitions. This action also will rescind the ''other species'' CDQ percentage allocations made to individual CDQ groups on January 17, 2003, and supercede the Alaska Regional Administrator's 2003–2005 allocation decision pertaining to this CDQ reserve category. These changes are necessary to promote the ability of CDQ groups to more fully utilize their annual groundfish CDQ allocations in support of the goals of the CDQ Program, to enhance NMFS' ability to administer the program, and to improve the consistency and clarity of CDQ Program regulations.

NMFS published a proposed rule to modify the management of the ''other species'' CDQ reserve on October 22, 2003 (68 FR 60327), with comments invited through November 6, 2003. The preamble to the proposed rule contains a full description and justification of the regulatory revisions implemented by this action. The preamble also contains additional background on the general history of the CDQ program and specific management measures used to allocate and account for the catch of ''other species'' CDQ, as well as the purpose and need for this action. No letters of comment were received by the end of the comment period. No changes were made from the proposed rule.

Classification

For the reasons set forth below, the Assistant Administrator finds that the primary provision of this action relieves a restriction, thereby making the normal 30–day delay in effective date inapplicable to the amendment to § 679.31(f). Without this action, existing regulations prohibit CDQ groups from exceeding any CDQ allocation, as discussed in the preamble. CDQ groups likely will have to curtail some of their target fisheries because they lack adequate ''other species'' CDQ to account for the incidental catch of such species. In this event, CDQ groups would forfeit some of the revenues that they would otherwise receive from the complete harvest of their CDQ target allocations. This would result in unnecessary adverse impacts to eligible communities that are dependent on CDQ royalties to fund economic development projects or on groundfish CDQ harvesting operations to provide employment to residents. This action would remove the allocation of CDQ ''other species'' to the CDQ groups and authorize management of CDQ ''other

species'' harvest at the CDQ reserve level and under the general management provisions at 50 CFR 679.20(d), thus relieving a restriction and allowing CDQ groups to continue fishing operations for CDQ target allocations without being curtailed by the group's harvest of ''other species.'' It is anticipated that this action will allow CDQ groups and their eligible communities to realize the benefits associated with the harvest of valuable CDQ target allocations. Therefore, under the authority set forth at 5 U.S.C. 553(d)(1) and (3), the revision to § 679.31(f) is effective immediately upon filing with the Office of the Federal Register.

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

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a). A copy of the EA/RIR/FRFA is available from NMFS (see **ADDRESSES**). The need for and objectives of this action are discussed in the preamble to this rule and in more detail in the proposed rule published October 22, 2003 (68 FR 60327). This rule: (1) amends the management of the ''other species'' CDQ reserve to discontinue allocating this reserve among CDQ reserves; (2) allows NMFS to manage the ''other species'' CDQ reserve with management measures currently used in the non-CDQ groundfish fishery; (3) eliminates the CDQ non-specific reserve mechanism; and (4) implements an assortment of regulatory revisions affiliated with the revision to the management of the ''other species'' CDQ reserve and changes to CDQ-related definitions.

NMFS prepared an IRFA to evaluate the impacts of this action on directly regulated small entities in compliance with the requirements of Section 603 of the Regulatory Flexibility Act. The IRFA was described in the classifications section of the proposed rule. The public comment period ended November 6, 2003. No comments related to the economic impact of this action were received.

The small entities that will be directly regulated by this action are the six CDQ groups that represent the 65 western Alaska communities that currently participate in the CDQ Program. This regulation will not impose new recordkeeping or reporting requirements on the regulated small entities.

This action relieves a constraint on CDQ groups to completely harvest their groundfish CDQ target species. NMFS considered, but did not adopt, a status quo alternative to the action because the alternative would not achieve the Council's objective for this action. Three additional alternatives also were identified for this action, but were not carried forward for further analysis. Two of the rejected alternatives encompassed allocative changes to the ''other species'' category that would have been difficult to accurately calculate to the degree that they would reliably benefit CDQ groups in the future. These rejected alternatives might also have been controversial to other BSAI fishery components due to concerns that such allocative changes could have adverse impacts on the successful prosecution of future non-CDQ fisheries. A third rejected alternative would have been contrary to statutory provisions of the Magnuson-Stevens Act. These alternatives were discussed in further detail in the classification section of the proposed rule.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Small entities are not required to take any additional actions to comply with this action. This final rule constitutes the agency's small entity compliance guide pursuant to Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. Copies of this final rule are available from NMFS (see ADDRESSES) and at the following web site: *http://www.fakr.noaa.gov/*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 9, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

■ 2. In § 679.2, the definitions for ''Community Development Quota,'' ''Community Development Quota Program,'' ''Community Development Quota reserve,'' and ''Prohibited species quota (PSQ)'' are removed; the definitions for ''CDQ,'' ''CDQ Program,'' ''CDQ reserve,'' ''PSQ,'' and ''PSQ reserve'' are added in alphabetical order; and the definitions for ''CDQ species'' and ''PSQ species'' are revised to read as follows:

§ 679.2 Definitions.

* * * * *

CDQ means community development quota and is the amount of a CDQ reserve that is allocated to a CDQ group.

* * * * *

CDQ Program means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

* * * * *

CDQ reserve means a percentage of each groundfish TAC apportioned under § 679.20(b)(1)(iii), a percentage of a catch limit for halibut, or a percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ Program.

CDQ species means any species or species group that is allocated from a CDQ reserve to a CDQ group.

* * * * *

PSQ means prohibited species quota and is the amount of a PSQ reserve that is allocated to a CDQ group.

* * * * *

PSQ reserve means the percentage of a prohibited species catch limit established under § 679.21(e)(1) and (e)(2) that is allocated to the groundfish CDQ program under § 679.21(e)(1)(i) and (e)(2)(ii).

PSQ species means any species or species group that has been allocated from a PSQ reserve to a CDQ group.

* * * * *

■ 3. In § 679.7, paragraph (d)(16) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d)* * *

(16) Use any groundfish accruing against a CDQ reserve as a basis species for calculating retainable amounts of non-CDQ species under § 679.20.

* * * * *

■ 4. In § 679.31, the introductory paragraph to this section and paragraph (f) are revised to read as follows:

§ 679.31 CDQ Reserves.

Portions of the CDQ and PSQ reserves for each subarea or district may be allocated for the exclusive use of CDQ groups in accordance with CDPs approved by the Governor in consultation with the Council and approved by NMFS. NMFS will allocate no more than 33 percent of each CDQ reserve to any one group with an approved CDP.

* * * * *

(f) *Management of the Groundfish CDQ Reserves*—(1) *Groundfish CDQ reserves allocated among CDQ groups.* (i) Except as limited by paragraph (f)(2) of this section, the groundfish CDQ reserves are apportioned among CDQ groups using percentage allocations approved by NMFS under § 679.30(d).

(ii) If the groundfish harvest specifications required by § 679.20(c) change the species comprising a TAC category or change a TAC category by combining or splitting management areas, then the CDQ percentage allocations approved by NMFS for the original TAC category will apply to any new categories.

(iii) A CDQ group is prohibited by § 679.7(d)(5) from exceeding an annual groundfish CDQ amount allocated to it.

(iv) NMFS may specify limitations or prohibitions to prevent overfishing of any BSAI groundfish species, including measures specific to groundfish CDQ species allocated among CDQ groups (see § 679.20(d)(3)).

(2) *Groundfish CDQ reserves not allocated among CDQ groups.* (i) The ''other species'' CDQ reserve, or individual species that comprise the ''other species'' CDQ reserve, will not be allocated among CDQ groups.

(ii) Groundfish CDQ reserves not allocated among CDQ groups will be managed at the CDQ reserve level under general limitations at § 679.20(d).

■ 5. In § 679.32, paragraph (c)(1)(i) is revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(1) *Catcher vessels without an observer.* (i) Operators of catcher vessels less than 60 ft (18.3 m) LOA must retain all groundfish CDQ species, halibut CDQ, and salmon PSQ until they are delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section, unless retention of groundfish CDQ species is not authorized under § 679.4, discard of the groundfish CDQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by the State of Alaska.

* * * * *

[FR Doc. 03–30921 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 241

Tuesday, December 16, 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.

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

[Regulations No. 22]

RIN 0960–AF87

Evidence Requirements for Assignment of Social Security Numbers (SSNs); Assignment of SSNs to Foreign Academic Students in F–1 Status

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules.

SUMMARY: We propose to clarify our rules for assigning SSNs to foreign academic students in Bureau of Citizenship and Immigration Services (BCIS, formerly the Immigration and Naturalization Service or INS) classification status F–1 (referred to throughout this preamble as F–1 students). Specifically, we propose to add additional evidentiary requirements for F–1 students who are applying for an SSN. In addition to meeting SSA's requirement to provide evidence of age, identity, legal alien status, and work authorization, F–1 students would also be required to present evidence that employment has been secured before we will assign the F–1 student an SSN. These rules would further enhance the integrity of SSA's enumeration processes for assigning SSNs by reducing the opportunity for fraud through misuse of SSNs.

DATES: To be sure that your comments are considered, we must receive them by February 17, 2004.

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

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.,* Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Social Insurance Specialist, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020, or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under section 205(c)(2)(A) of the Social Security Act (the Act), the Commissioner of Social Security is required to ''establish and maintain records of the amounts of wages paid to * * * each individual and of the periods in which such wages were paid * * *'' In addition, under section 205(c)(2)(B)(i)(I) of the Act, the Commissioner is required to assign Social Security numbers ''to the maximum extent practicable * * * to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment.''

Current SSA Rules

Our regulations at 20 CFR 422.105 currently state that a nonimmigrant alien whose INS Form I–94, Arrival/Departure Record, does not reflect a classification permitting work must submit a current document issued by INS that verifies authorization to work has been granted.

Our regulations at 20 CFR 422.107(e) currently state that ''When a person who is not a U.S. citizen applies for an original social security number or a duplicate or corrected social security number card, he or she is required to submit, as evidence of alien status, a current document issued by the [INS] in accordance with [its] regulations. The document must show that the applicant has been lawfully admitted to the United States, either for permanent residence or under authority of law permitting him or her to work in the United States, or that the applicant's alien status has changed so that it is lawful for him or her to work.'' If the applicant submits a valid unexpired INS document(s) that shows current authorization to work, we will assign an SSN and issue a card that is valid for work.

Current SSA procedures require an F–1 student who needs an SSN for work to present evidence of age, identity, lawful F–1 alien status, and work authorization. This work authorization can either be from BCIS in the form of an employment authorization document (EAD) or from the F–1 student's school. In the past, when an F–1 student applied for an SSN, we believed that the student had a job or imminent plans to secure a job. However, our recent experience has shown that some F–1 students apply for an SSN even when there is limited or no employment available. F–1 students often inform us that they do not intend to work but need an SSN to obtain goods or services in the community.

Additional evidence requirements for F–1 student SSN applicants are needed because available SSA data suggest that some F–1 students assigned SSNs misuse those SSNs to work illegally in the U.S. (*i.e.*, in work not permitted by their classification under immigration regulations at 8 CFR 274a.12) or engage in other fraudulent activities. (*See* the SSA Office of the Inspector General (OIG) study, ''Using Social Security Numbers To Commit Fraud'' (A–08–99–42002, May 1999) at *http://www.ssa.gov/oig/ADOBEPDF/A–08–99–42002.pdf).*

Wages have been reported to us for F–1 students who have been engaged in

off-campus employment without proper authorization from their schools or BCIS. SSN misuse can impact society in the form of illegal employment in the U.S., fraudulent entitlement to Federal and State benefits and services, and other types of illegal activity such as bank and credit card fraud and identity theft.

In order to strengthen the security of the enumeration process, we propose to require additional evidence from F–1 students before we will assign SSNs to them.

Explanation of Additional Evidentiary Requirements

422.105 Presumption of Authority of Nonimmigrant Alien To Accept Employment

We propose to revise § 422.105 to state that, unless the F–1 student has an employment authorization document issued by BCIS, the F–1 student applicant must provide additional documentation that confirms both that he or she has authorization from the school to engage in employment and has secured authorized employment. (As of March 1, 2003, INS's benefit functions became part of the BCIS in the Department of Homeland Security.) We understand from discussions with BCIS officials that they support our plans to assign SSNs only to those F–1 students who have secured a job. The proposed revision includes a cross-reference to § 422.107(e)(2), where the specific evidence requirements will be explained.

422.107 Evidence Requirements

We propose to revise paragraph (e) of § 422.107 of our regulations by redesignating paragraph (e) as paragraph (e)(1) and adding a new paragraph (e)(2) to specify that if an F–1 student does not have an employment authorization document, the F–1 student must provide documentation of both work authorization and employment before we will assign an SSN to the student. First, the F–1 student would need to provide documentation from the school that he or she will be engaging in authorized employment. Under this clarification of our policy, we would not assign an SSN to the F–1 student unless the student provides a Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Status, and provides written confirmation from the designated school official (DSO) of (1) the nature of the employment the F–1 student is or will be engaged in and (2) the identification of the employer for whom the F–1 student is or will be working.

Second, we also propose to require that the F–1 student provide us with documentation that he or she is engaged in or has secured employment, *e.g.*, a statement from the F–1 student's employer.

By adding these additional evidentiary requirements, we believe there will be fewer opportunities for abuse of the enumeration process without having any adverse effects on F–1 students who need to work while they are in the U.S. The additional documentation we would require should be readily available.

Clarity of These Regulations

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Federalism

We have reviewed these proposed rules under the threshold criteria of Executive Order 13132 and have determined that they 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. There may be some minimal impact on those States whose academic institutions have not developed an alternative method in their record-keeping systems for identifying F–1 students not eligible for SSNs. There may also be some minimal impact on States whose academic institutions may be an F–1 student's employer.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules; we are seeking clearance of these burdens because they were not considered during the clearance of the forms.

CFR citation	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden
422.105(a); 422.107	1	1	1	1
422.105(b)	125,000	1	1 minute	2,083 hours

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Office of Management and Budget at the following fax number and to the Social Security Administration at the following address or fax number:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

Comments can be received for between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social Security.

Dated: November 13, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set forth in the preamble, we propose to amend part 422, subpart B, chapter III of title 20, Code of Federal Regulations as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

1. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13).

2. Section 422.105 is revised to read as follows:

§ 422.105 Presumption of authority of nonimmigrant alien to engage in employment.

(a) *General rule.* Except as provided in paragraph (b) of this section, if you are a nonimmigrant alien, we will presume that you have permission to engage in employment if you present a Form I–94 issued by the Bureau of Citizenship and Immigration Services that reflects a classification permitting work. (*See* 8 CFR 274a.12 for Form I–94 classifications.) If you have not been issued a Form I–94, or if your Form I–94 does not reflect a classification permitting work, you must submit a current document authorized by the Bureau of Citizenship and Immigration Services that verifies authorization to work has been granted, *e.g.*, an employment authorization document, to enable SSA to issue an SSN card that is valid for work.

(b) *Exception to presumption for foreign academic students in Bureau of Citizenship and Immigration Services classification status F–1.* If you are an F–1 student and do not have a separate Bureau of Citizenship and Immigration Services employment authorization document as described in paragraph (a) of this section, we will not presume you have authority to engage in employment without additional evidence. Before we will assign an SSN to you that is valid for work, you must give us proof (as explained in § 422.107(e)(2)) that:

(1) You have authorization from your school to engage in employment, and

(2) You are engaging in, or have secured, employment.

3. Section 422.107 is amended by redesignating paragraph (e) as paragraph (e)(1), adding a heading for paragraph (e)(1), and adding a new paragraph (e)(2) to read as follows:

§ 422.107 Evidence requirements.

* * * * *

(e) *Evidence of alien status.* (1) *General evidence rules.* * * *

(2) *Additional evidence rules for F–1 students.* (i) *Evidence from your designated school official.* If you are an F–1 student, you must give us documentation from your designated school official that you are authorized to engage in employment. You must submit your Form I–20, the Certificate of Eligibility for Nonimmigrant (F–1) Status. You must also submit documentation from your designated school official that includes:

(A) The nature of the employment you are or will be engaged in, and

(B) The identification of the employer for whom you are or will be working.

(ii) *Evidence of your employment.* You must also provide us with documentation that you are engaging in, or have secured employment; *e.g.*, a statement from your employer.

* * * * *

[FR Doc. 03–30965 Filed 12–15–03; 8:45 am]

BILLING CODE 4191–02–P

JAMES MADISON MEMORIAL FELLOWSHIP FOUNDATION

45 CFR Part 2400

Fellowship Program Requirements

AGENCY: James Madison Fellowship Foundation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The following are proposed amendments to the regulations governing the annual competition for James Madison Fellowships and the obligations of James Madison Fellows. These amendments would update and replace certain provisions of the Foundation's existing regulations as implemented by the James Madison Memorial Fellowship Act of 1986. These revised regulations would govern the qualifications and applications of candidates for fellowships; the selection of Fellows by the Foundation; the graduate programs Fellows must pursue; the terms and conditions attached to awards; the Foundation's annual Summer Institute on the Constitution; and related requirements and expectations regarding fellowships.

DATES: Comments must be submitted on or before February 17, 2004.

ADDRESSES: Address all comments about these proposed regulations to James Madison Memorial Fellowship Foundation, 2000 K Street, NW., Suite 303, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: Lewis F. Larsen. Telephone: (202) 653–8700.

SUPPLEMENTARY INFORMATION: The reason for the proposed changes to the Foundation's regulations comes as a result of the Foundation's desire to clarify several of the rules and regulations that James Madison Fellows must observe when accepting their fellowships. Although many of the changes are minor insertions of words and punctuation, this document specifically expands the definition section to include further detailed definitions on Credit Hour Equivalent, Incomplete, Repayment, Satisfactory Progress, Stipend, Teaching Obligation, Termination and Withdrawal. The Foundation now encourages James Madison Fellows to choose a graduate program which does not include the writing of a thesis. Graduate programs for which Fellows may apply have been broadened to included political science. Finally, a section entitled ''Teaching Obligation'' was added to further clarify the obligation to teach, required by the Foundation once each fellow has earned a master's degree.

Regulatory Flexibility Act Certification

The President certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

These regulations apply to individuals eligible to apply for fellowship assistance. Individuals are not included in the definition of ''small entities'' in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

List of Subjects in 45 CFR Part 2400

Education, Fellowships.

Dated: December 10, 2003.

Paul A. Yost, Jr.,

President.

For the reasons set forth in the preamble and under authority of 20 U.S.C. 4501 *et seq.,* Chapter XXIV, Title 45 of the Code of Federal Regulations is proposed to be amended by revising part 2400 as follows:

PART 2400—FELLOWSHIP PROGRAM REQUIREMENTS

1. The authority citation for part 2400 is revised to read as follows:

Authority: 20 U.S.C. 4501 *et seq.*, unless otherwise noted.

2. Section 2400.3 is amended by revising paragraphs (a)(8) and (b)(8) to read as follows:

§ 2400.3 Eligibility.

* * * * *

(a) * * *

(8) Sign agreements that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full year of study for which assistance was received, preferably in the State listed as their legal residence at the time of their fellowship award. For the purposes of this provision, a full academic year of study is considered by the Foundation to be 18 credit hours or 27 quarter hours. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

(b) * * *

(8) Sign an agreement that, after completing the education for which the fellowship is awarded, they will teach American history, American government, social studies, or political science full time in secondary schools for a period of not less than one year for each full academic year of study for which assistance was received, preferably in the State listed as their legal residence at the time of their fellowship award. Fellows' teaching obligations will be figured at full academic years of study; and when Fellows have studies for partial academic years, those years will be rounded upward to the nearest one-half year to determine Fellows' total teaching obligations.

3. Section 2400.4 is amended by revising the definitions of ''*Full-time study,*'' ''*State,*'' and ''*Stipend,*'' to read as follows:

§ 2400.4 Definitions.

* * * * *

Full-time study means study for an enrolled student who is carrying at least 9 credit hours a semester or its equivalent.

* * * * *

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Stipend means the amount paid by the Foundation to a Fellow or on his or her behalf for the allowable costs of graduate study which have been approved under the fellowship.

* * * * *

4. Section 2400.20 is revised to read as follows:

§ 2400.20 Preparation of application.

Applications, on forms mailed directly by the Foundation to those who request applications or downloaded from the Foundation's website, must be completed by all fellowship candidates in order that they be considered for an award.

5. Section 2400.30 is amended by adding a new paragraph (g) to read as follows:

§ 2400.30 Selection criteria.

* * * * *

(g) Content of the 600-word essay.

§ 2400.31 [Amended]

6. In § 2400.31, paragraph (b) is amended by removing the word ''legally'' and adding, in its place, the word ''legal''; and paragraph (c) is amended by removing the words ''An alternate will receive'' and adding, in their place, ''An alternate may, at the Foundation's discretion, receive''.

§ 2400.42 [Amended]

7. In § 2400.42, paragraph (b) is amended by removing the word ''constitution'' and adding, in its place, the word ''Constitution''.

§ 2400.43 [Amended]

8. In § 2400.43, paragraph (c) is amended by removing the words ''strongly encourages'' and adding, in their place, the words ''in general, requires''.

9. Section 2400.44 is amended by revising paragraph (a) to read as follows:

§ 2400.44 Commencement of graduate study.

(a) Fellows may commence study under their fellowships as early as the summer following the announcement of their award. Fellows are normally expected to commence study under their fellowships in the fall term of the academic year following the date on which their award is announced. However, as indicated in § 2400.61, they may seek to postpone the commencement of fellowship study for up to one year under extenuating circumstances.

* * * * *

§ 2400.46 [Amended]

10. Section 2400.46 is amended by removing the word ''five'' and adding, in its place, the word ''three''.

11. Section 2400.47 is revised to read as follows:

§ 2400.47 Summer Institute's relationship to fellowship.

Each year, the Foundation normally offers during July a four-week graduate-level Institute on the principles, framing, ratification, and implementation of the United States Constitution at an accredited university in the Washington, DC area. The Institute is an integral part of each fellowship.

12. Section 2400.48 is revised to read as follows:

§ 2400.48 Fellows' participation in the Summer Institute.

Each fellow is required as part of his or her fellowship to attend the Institute (if it is offered), normally during the summer following the Fellow's commencement of graduate study under a fellowship.

§ 2400.50 [Amended]

13. Section 2400.50 is amended by removing ''For their participation in the Institute, Fellows are paid'' and adding, in its place, ''At the Foundation's discretion, Fellows may be paid''.

§ 2400.53 [Amended]

14. Section 2400.53 is amended by adding a new sentence at the end to read ''A waiver of the time limit may be given for full-time students who require more than 36 credit hours or 54 quarter hours to complete their approved degree.''

15. Section 2400.55 is amended by revising paragraphs (f) and (i) to read as follows:

§ 2400.55 Certification for stipend.

* * * * *

(f) The amount and nature of income from any other grants or awards;

* * * * *

(i) A full Plan of Study over the duration of the fellowship, including information on the contents of required constitutional courses. Senior Fellows must provide evidence of their continued full-time employment as teachers in grades 7–12.

16. Section 2400.56 is revised to read as follows:

§ 2400.56 Payment of stipend.

Payment for tuition, required fees, books, room, and board subject to the limitations in §§ 2400.52 through 2400.55 and §§ 2400.59 through 2400.60 will be paid via Electronic Funds Transfer to each Fellow at the beginning of each term of enrollment and upon the Fellow's submission of a completed Payment Request Form which includes the current University bulletin of cost information.

§ 2400.58 [Amended]

17. In § 2400.58, paragraph (a) is amended by removing the words ''fewer than'' and adding, in their place, the words ''at least''; and paragraph (b) is amended by removing the words ''the Foundation will seek to recover'' and adding, in their place, the words ''the Fellow must repay''.

§ 2400.60 [Amended]

18. In § 2400.60, paragraph (a) is amended by removing the words ''unless they are credited to the minimum number of credits required for the degree'' at the end of the paragraph.

§ 2400.61 [Amended]

19. Section 2400.61 is amended by adding a new sentence at the end to read ''All postponements are given at the Foundation's discretion and will normally not extend for more than one year.''

20. Section 2400.63 is revised to read as follows:

§ 2400.63 Excluded graduate study.

James Madison Fellowships do not provide support for study toward doctoral degrees, for the degree of master of arts in public affairs or public administration. The Foundation may at its discretion, upon request of the Fellow, provide tuition only assistance toward teacher certification.

[FR Doc. 03–30945 Filed 12–15–03; 8:45 am]

BILLING CODE 6820–05–P

Notices

Federal Register

Vol. 68, No. 241

Tuesday, December 16, 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

Agricultural Marketing Service

[Doc. No. FV04–901–1NC]

Notice of Request for Extension and Revision of 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 an extension for and revision to a currently approved generic information collection for vegetables and specialty crop marketing order programs.

DATES: Comments on this notice must be received by February 17, 2004.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, room 2525–S., Washington, DC 20090–6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: *moabdocket_clerk@usda.gov.*

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: *Jay.Gueber@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Vegetable and Specialty Crop Marketing Orders.

OMB Number: 0581–0178.

Expiration Date of Approval: April 30, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruit, vegetables, and specialty crops, in specified production areas, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality products for consumers and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture (Secretary) is authorized to oversee the order operations and issue regulations recommended by a committee or board of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the marketing order programs. Under the Act, orders may authorize the following: production and marketing research including paid advertising, volume regulations, reserves including pools and producer allotments, container regulations, and quality control. Assessments are levied on handlers regulated under the marketing orders. Also pursuant to section 8e of the Act, importers of raisins, dates, and dried prunes are required to submit certain information.

Several forms are required to be filed by USDA to enable its administration of each program. These include forms covering the section process for industry members to serve on a marketing order's committee or board and ballots used in referenda to amend or continue marketing order programs.

Under Federal marketing orders, producers and handlers are nominated by their peers to serve as representatives on a committee or board which administers each program. Nominees must provide information on their qualifications to serve on the committee or board. Nominees are selected by the Secretary. Formal rulemaking amendments must be approved in referenda conducted by USDA and the Secretary. For the purposes of this action, ballots are considered information collections and are subject to the Paperwork Reduction Act. If an order is amended, handlers are asked to sign an agreement indicating their willingness to abide by the provisions of the amended order.

Some forms are required to be filed with the committee or board. The orders and their rules and regulations authorize the respective commodities' committees and boards, the agencies responsible for local administration of the orders, to require handlers and producers to submit certain information. Much of the information is compiled in aggregate and provided to the respective industries to assist in marketing decisions. The committees and boards have developed forms as a means for persons to file required information relating to supplies, shipments, and dispositions of their respective commodities, and other information needed to effectively carry out the purpose of the Act and their respective orders, and these forms are utilized accordingly.

OMB Control No. 0581–0071, Almonds Grown in California, Marketing Order No. 981, will also be merged into this information collection.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the orders, and their use is necessary to fulfill the intent of the Act as expressed in the orders, and the rules and regulations issued under the orders.

The information collected is used only by authorized employees of the committees and boards and authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff. Authorized committee/board employees are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.086 hours per response.

Respondents: Producers, handlers, processors and importers.

Estimated Number of Respondents: 23,753.

Estimated Number of Responses: 163,709.

Estimated Number of Responses per Respondent: 7.195

Estimated Total Annual Burden on Respondents: 14,032 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and the appropriate marketing order, and be mailed to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, room 2525–S, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* Comments should also reference the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

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: December 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30997 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–304]

United States Standards for Grades of Mangos

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with creating an official grade standard, is soliciting comments on the petition to create the United States Standards for Grades of Mangos. At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry and identify commodities that may be better served if a grade standard was developed. As a result, AMS has noted that the industry is interested in the creation of U.S. Standards for Grades of Mangos.

DATES: Comments must be received by February 17, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240, fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185, e-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION:

At a recent meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review all the fresh fruit and vegetable grade standards for usefulness in serving the industry and identify commodities that may be better served if a grade standard was developed. During the standards review, AMS noted that several industry members requested AMS develop a grade standard for mangos. In conjunction with industry interest in the development of a grade standard for mangos, AMS has also identified mangos as a possible commodity for the development of a grade standard. This standard could contain sections pertaining to grades, size classifications, color requirements, tolerances, application of tolerances, pack requirements, definitions, and other relevant and necessary provisions. Prior to undertaking detailed work to develop a proposed standard, AMS is soliciting comments on the possible development of U.S. standards for grades of mangos and the probable impact on growers, processors, and distributors.

This notice provides for a 60-day comment period for interested parties to comment on the development of the standards. Should AMS conclude that there is a need for the development of the standards, a proposed standard will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: December 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30998 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

18 Fire Recovery Project, Deschutes National Forest, Deschutes County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a proposed action to salvage dead and severely damaged trees, and plant trees and other vegetation to assist in the restoration of the area burned in the 18 Fire on the Bend/Fort Rock Ranger District of the Deschutes National Forest. The 18 Fire, located about 3.5 miles southeast of Bend, Oregon, burned approximately 3,810 acres, outside of the range of the northern spotted owl, entirely on National Forest System lands. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated during the scoping process. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by January 16, 2004.

ADDRESSES: Send written comments to Walter C. Schloer, Jr., District Ranger, Bend/Fort Rock Ranger District, 1230 NE. Third Street, Suite 262A, Bend, Oregon 97701.

FOR FURTHER INFORMATION CONTACT: Mark Macfarlane, Environmental Coordinator, 1230 NE. Third Street, Suite 262A, Bend, Oregon 97701. Phone: 541–383–4769. E-mail: *mmacfarlane@fs.fed.us.*

SUPPLEMENTARY INFORMATION: *Purpose and Need.* An estimated 76 percent of the fire occurred within the Deer Habitat Management Area of the Deschutes National Forest Land and Resource Management Plan (Forest Plan). The remaining portion of the fire burned within the General Forest (23 percent)

and Scenic Views (1 percent) Management Areas. An estimated 2,500 acres burned at a moderate to high intensity with tree mortality of between 75 and 100 percent.

Timber salvage is needed to recover economic value and to provide funds to offset the costs of reforestation and restoration is an important emphasis of these management areas. Adjacent seed sources are no longer available in many areas, particularly within the interior areas of the fire. Based on shrub response within adjacent wildfires, interior areas with high tree mortality would require reforestation by planting ponderosa pine. Planting would establish a ponderosa pine forest that is desirable for long-term objectives such as hiding cover for big game and restoration of habitat for forest dependent species. Lowering fuel loadings to a level that reduces the likelihood of a high severity fire in regenerated stands would promote the long-term survival and growth of new conifers. A fire in heavy surface fuels could increase the duration of elevated temperatures during a fire event to levels capable of altering soil properties and affecting site productivity.

Proposed Action This action includes timber salvage and fuels reduction on approximately 2,030 acres. Fuels reduction would consist of whole tree removal. Salvage is only proposed in areas that experienced more than 75 percent mortality. An estimated 4 miles of temporary roads would be needed to remove the salvaged material. Ponderosa pine would be planted on 2,400 acres, including 2,030 acres of salvaged land.

Scoping. Public participation will be sought at several points during the analysis, including listing of this project in the winter 2003 and subsequent issues of the Central Oregon Schedule of Projects and on the Deschutes National Forest website. Agencies, organizations, tribes, and individuals who have indicated their interest would be contacted.

Issues and Alternatives. Preliminary issues identified include the potential effect of the proposed action on: soil productivity, snag and down wood habitat, and noxious weeds. A No Action alternative will be analyzed in the EIS. Other alternatives would result from the scoping process and refined issues.

Comment. Public comments about this proposal are requested in order to assist in identifying issues, determine how to best manage the resources, and to focus the analysis. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

A draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public review by April 2004. The comment period on the draft EIS will be 45 days from the date EPA publishes the Notice of Availability in the **Federal Register**. The final EIS is scheduled to be available July 2004.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court ruling related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions on the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Deschutes National Forest. The responsible official will decide where, and whether or not to salvage timber, reduce fuels, and reforest the area. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place. The 18 Fire Recovery Project decision and the reasons for the decision will be documented in the record of decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: December 5, 2003.

Kevin Martin,

Deputy Forest Supervisor.

[FR Doc. 03–30953 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service, USDA

Notice of Modoc County RAC Meetings

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393), the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday January 5, 2004 from 6 to 8 p.m. in Alturas, California. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: Agenda topics for the meeting include approval of the November 3, 2003 minutes, quarterly review of projects approved, consideration of a modification to the Sugar Hill project, and election of new officers. The meeting will be held at Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California on Monday, January 3, 2004 from 6 to 8 p.m. Time will be

set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor Stan Sylva, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. 03–30993 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB90

Forest Transportation System Analysis; Revisions to Road Management Policy

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of final agency directive.

SUMMARY: The Forest Service is issuing a final directive that incorporates direction previously issued in the Forest Service directive system as Interim Directive (ID) 7710–2001–3 and ID 7710–2001–1, with minor clarifications. This final directive provides internal administrative direction to guide Forest Service employees in the improvement of the analysis of and decisionmaking about the forest transportation system. The final directive is issued to the Forest Service Manual (FSM) Title 7700—Engineering, Chapter 7710—Transportation Atlas, Records, and Analysis, as Amendment 7700–2003–2.

EFFECTIVE DATE: The final directive is effective December 16, 2003.

ADDRESSES: The final directive, which includes a digest of the summary of changes and the revised directive text in its entirety, is available electronically via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives/fsm/7710*. Single paper copies of the directive also are available by contacting the USDA Forest Service, Engineering Staff (Mail Stop 1101), 1400 Independence Avenue, SW., Washington, DC 20250–1101.

FOR FURTHER INFORMATION CONTACT: Deborah Beighley or Nelson Hernandez, Engineering Staff, Forest Service, at (703) 605–4617 and (703) 605–4613, respectively.

SUPPLEMENTARY INFORMATION:

On January 12, 2001, the Forest Service concurrently adopted revised final regulations at 36 CFR part 212 (66 FR 3206) and revised agency directives in Forest Service Manual (FSM) Chapter 7700—Zero Code and Chapter 7710—Transportation Atlas, Records, and Analysis (66 FR 3219) to guide transportation planning, analysis, and management, especially road management on National Forest System lands. These regulations and directives together comprise what is referred to as the Forest Service Road Management Strategy.

The final rule at 36 CFR part 212 directs the Responsible Official of each National Forest, Grassland, or other unit of the National Forest System to perform a comprehensive analysis of the road system within the unit and to document the overall forest transportation system in a transportation atlas.

The directive at FSM Chapter 7710 (Amendment 7700–2001–3) established standards for creation of the road atlas and for determining the scope and scale of roads analyses needed to inform road management decisions; that is, road construction, reconstruction, and decommissioning. Additionally, this revision of FSM Chapter 7710 included interim requirements that, rather than addressing the transportation atlas, record, or analysis, imposed a significant restriction on road construction or reconstruction in inventoried roadless areas and contiguous unroaded areas until a forest-scale roads analysis is completed and incorporated into the Forest plan.

Upon adoption of the road management final rule and directives in January 2001, the Department and the agency reviewed those documents to determine if there were impediments to implementation. These reviews led the agency to initiate several Interim Directives (IDs).

The first was ID 7710–2001–1, issued May 31, 2001 (66 FR 44590), which encouraged reliance on local expertise and authority over forest-level issues as much as possible. The next two IDs (7710–2001–2 and 2400–2001–3) issued July 27, 2001 (66 FR 44111), implemented the Chief's June 7, 2001, announcement to manage and protect inventoried roadless areas as an important component of the National Forest System and to reserve the authority to make decisions, except in specific circumstances, regarding road management activities and timber harvesting in those areas. In a letter to Regional Foresters dated June 12, 2001, the Deputy Chief for National Forest System, noting the Chief's June 7, announcement, asked Regional Foresters and Forest Supervisors to review the road management policy to identify any provisions that they believed should be revised.

Further review of the road management policy resulted in the issuance of two new IDs (7710–2001–3 and 1920–2001–1) issued December 14, 2001 (66 FR 65796), which separated interim requirements related to road construction and reconstruction in inventoried roadless areas from the roads analysis direction in FSM Chapter 7710 and relocated the modified interim requirements to FSM Chapter 1920—Land and Resource Management Planning.

Over 72,000 responses in the form of letters, faxes, and e-mail messages were received on the three different **Federal Register** notices regarding the five IDs concerning the management of the forest transportation system analysis and roadless area protection. These comments came from private citizens, elected officials, and from groups and individuals representing businesses, private organizations, and Federal agencies. Responses consisted of over 9,500 original responses and over 62,500 form letters.

Public comment on the five IDs addressed a wide range of topics, many of which were directed at management of roadless areas and issues associated with the ID 1920–2001–1 to FSM Chapter 1920. Many people supported the IDs to FSM Chapter 7710, which provided for better inventory, analysis, and management of the Forest Service roads system, and separated direction for managing roads from direction on managing National Forest System land. Some respondents requested that the Forest Service revise the ID to FSM Chapter 7710 to clarify the definition of a road and the need for and content of a roads analysis.

This final directive to FSM 7710 represents the culmination of the agency's internal and public reviews of the practices concerning management of the forest transportation system. The agency has decided to incorporate the current ID direction into Amendment 7700–2003–2 to FSM 7710, with some minor clarifications. Comments regarding ID 1920–2001–1 to FSM Chapter 1920 on roadless area management will be addressed when the Amendment to that chapter is finalized.

Dated: December 8, 2003.

Dale N. Bosworth,

Chief.

[FR Doc. 03–30871 Filed 12–15–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583–008]

Circular Welded Carbon Steel Pipe and Tubes From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 2002 - 2003 administrative review of the antidumping duty order on circular welded carbon steel pipe and tubes from Taiwan. This review covers one manufacturer/exporter of the subject merchandise to the United States, Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing), and the period May 1, 2002 through April 30, 2003.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background:

On July 1, 2003, in response to a request from petitioners, Allied Tube & Conduit Corporation, IPSCO Tubulars, Inc., and Wheatland Tube Company, the Department published in the **Federal Register** our notice of initiation of this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 Fed. Reg. at 39,055. Pursuant to the time limits for administrative reviews established in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines for this review are January 31, 2004, for the preliminary results and May 30, 2004, for the final results.

Extension of Time Limits:

Section 751(a)(3)(A) of the Tariff Act and 351.213(h) of the Department's regulations require the Department to issue the preliminary results of an antidumping administrative review within 245 days after the last day of the month in which occurs the anniversary date of the publication of the order. These same sections, however, provide that if it is not practicable to complete the review within those deadlines, the Department may extend the 245-day period to 365 days. We have determined it is not practicable for the Department to complete this review within the normal statutory time limit due to a number of significant case issues. These include, *inter alia,*: the sale of Yieh Hsing's pipe making facilities in their entirety during this period of review to Yieh Phui, an ''affiliated'' (Yieh Hsing's characterization) company; the unknown nature of any affiliations between Yieh Hsing and other entities in Taiwan engaged in the steel- or pipe-making industry, such as Yieh United Steel Company; the extent, if any, to which affiliated companies supplied hot-rolled feed stock or other raw materials to Yieh Hsing's pipe mill; and a pending request for a changed circumstances administrative review to establish Yieh Phui's entitlement to Yieh Hsing's cash deposit rate.

Because it is not practicable to complete this review within the normal statutory time limit, the Department is extending the time limits for completion of the preliminary results until May 30, 2004, in accordance with section 751(a)(3)(A) of the Tariff Act and 351.213(h)(2) of the Department's regulations. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: December 2, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–31019 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602–805, A-484–802, A-419–802, A-588–864, A-791–818]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Electrolytic Manganese Dioxide from Australia, Greece, Ireland, Japan, and South Africa.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 20, 2003, the Department of Commerce (the Department) initiated these antidumping duty investigations of Electrolytic Manganese Dioxide from Australia, Greece, Ireland, Japan, and South Africa, (68 FR 51551, dated August 27, 2003). The notice of initiation stated that the Department would issue preliminary determinations no later than January 7, 2004, 140 days after the date of initiation. *See* 68 FR 51551. The Department is now postponing the preliminary determinations in these antidumping duty investigations from January 7, 2004 until no later than February 26, 2004. These postponements are made pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Joe Welton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0165.

Postponement of Preliminary Determinations

Pursuant to section 733(b)(1)(A) of the Act, the Department shall make a preliminary determination in an antidumping duty investigation within 140 days after the date on which the Department initiates the investigation. Section 733 (c)(1)(A) of the Act further provides, however, that the Department may extend the 140-day period to 190 days if the petitioner makes a timely request for an extension. On November 14, 2003 and November 26, 2003, Kerr-McGee Chemical, LLC (''petitioner'') made timely requests pursuant to 19 CFR 351.205(e) for 30-day and 20-day postponements, respectively, for a total of 50 days, pursuant to section 733(c)(1)(A) of the Act. Therefore, in accordance with petitioner's requests for postponements, the Department is postponing the preliminary determinations in these investigations for 50 days. These preliminary determinations will now be due no later than February 26, 2004. Unless extended, the deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: December 9, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31016 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–863]

Honey from the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of first antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting the first administrative review of the antidumping duty order on honey from the People's Republic of China. The period of review for those entities with an affirmative critical circumstances finding is February 10, 2001, through November 30, 2002. For all other companies, the period of review is May 11, 2001, through November 30, 2002. Two companies named in the initiation of this review had no exports or sales of the subject merchandise during their applicable period of review, and consequently we rescinded the review of these companies. In addition, we rescinded our review of three companies that are participating in new shipper reviews covering the period February 10, 2001, through November 30, 2002. We preliminarily determine that three companies have failed to cooperate by not acting to the best of their ability to comply with our requests for information and, as a result, should be assigned a rate based on adverse facts available. Finally, we have preliminarily determined that one respondent did make sales to the United States of the subject merchandise at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument(s).

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Brandon Farlander at (202) 482–3019 or (202) 482–0182, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on honey from the People's Republic of China (PRC), 67 FR 77222 (December 17, 2002). On December 31, 2002, the Department received a timely request from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requesting that the Department conduct an administrative review of the antidumping duty order on honey shipments exported to the United States from the following PRC honey producers/exporters during the period of May 11, 2001, through November 30, 2002: (1) Anhui Native Produce Import & Export Corp. (Anhui), (2) Henan Native Produce and Animal By-Products Import & Export Company (Henan), (3) High Hope International Group Jiangsu Foodstuffs Import and Export Corp. (High Hope), (4) Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp. (Inner Mongolia), (5) Kunshan Foreign Trade Company (Kunshan), (6) Shanghai Eswell Enterprise Co., Ltd. (Shanghai Eswell), (7) Shanghai Xiuwei International Trading Co., Ltd. (Shanghai Xiuwei), (8) Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (Sichuan Dubao), (9) Wuhan Bee Healthy Co., Ltd. (Wuhan), and (10) Zhejiang Native Produce and Animal By-Products Import & Export Corp. On December 31, 2002, we received a timely request from Zhejiang Native Produce and Animal By-Products Import & Export Corp. a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation (Zhejiang) requesting that the Department conduct an administrative review of its honey shipments to the United States during the period May 11, 2001, through November 30, 2002. On January 22, 2003, the Department initiated an administrative review of the antidumping duty order on honey from the PRC, for the period of May 11, 2001, through November 30, 2002, in order to determine whether merchandise imported into the United States is being sold at less than fair value with respect to these ten companies. *See Initiation of Antidumping and Countervailing Duty Administrative Review and Requests for Revocations in Part*, 68 FR 3009 (January 22, 2003) (*Administrative Review Initiation*).[1] On January 27, 2003, the Department clarified that the period of review (POR) for High Hope, Kunshan, Zhejiang, Wuhan, Shanghai Xiuwei, and Sichuan Dubao is February 10, 2001, through November 30, 2002. *See* Memorandum to the File through Donna L. Kinsella, Case Manager, Office 8; POR for Exporters of Honey from the People's Republic of China with Affirmative Critical Circumstances Findings (January 27, 2003).

On February 20, 2003, the Department issued antidumping duty questionnaires to the above-referenced ten PRC companies. On February 28, 2003, Wuhan submitted a letter certifying that it did not have any other shipments during the first review period that are not already subject to an ongoing new shipper review.[2] On February 28, 2003, Inner Mongolia and Anhui submitted separate letters each certifying that they did not have any shipments of subject merchandise during the period of May 11, 2001, through November 30, 2002.

On April 4, 2003, we received responses to Section A of our antidumping duty questionnaire from Zhejiang, Wuhan, and High Hope. In its reply to the antidumping duty questionnaire, High Hope stated that it is unwilling to make the expenditure of time and money required to participate in the review, and therefore, has concluded that it is not able to fully respond to the Department's questionnaire. On April 7, 2003, the Department received notification from Kunshan that it will not be participating in this proceeding, and therefore, it is not responding to our questionnaire. *See* Memorandum to the File from Angelica L. Mendoza; Non-Responsive Company, dated April 7, 2003. On April 18, 2003,

[1] In a separate proceeding, the Department also received timely requests from Shanghai Xiuwei and Sichuan Dubao, in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the PRC, which has a December annual anniversary month. On February 5, 2003, we initiated new shipper reviews for Shanghai Xiuwei and Sichuan Dubao. *See Initiation of New Shipper Antidumping Duty Reviews*, 68 FR 5868 (February 5, 2003) (*New Shipper Initiation*). The POR for the new shipper reviews of these two companies is identical to the POR for the administrative review.

[2] The Department conducted a six-month new shipper review of Wuhan's sales during the period December 1, 2001, through May 31, 2002. *See, e.g., Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 68 FR 33099 (June 3, 2003); and *Honey from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 68 FR 62053 (October 31, 2003) (*Wuhan NSR Final Results*). On March 18, 2003, Wuhan submitted an additional letter clarifying that although it did have additional exports and sales during the period February 10, 2001, through November 30, 2002, nevertheless the entries for consumption of this merchandise did not occur until after this POR.

the Department received responses to Sections C and D of the antidumping duty questionnaire from Zhejiang and Wuhan. Henan did not respond to its questionnaire.[3]

On April 22, 2003, petitioners withdrew their request for review of Shanghai Eswell. On May 6, 2003, the Department rescinded, in part, the administrative review of the antidumping duty order on honey with respect to Shanghai Eswell. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 23963 (May 6, 2003).

On May 6, 2003, the Department preliminarily determined to rescind, in part, the administrative reviews with respect to Anhui, Inner Mongolia, Shanghai Xiuwei, Sichuan Dubao, and Wuhan. *See* Memorandum to Barbara Tillman, Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III; Intent to Partially Rescind Administrative Reviews (May 6, 2003) (Rescission Memo). As discussed in the Rescission Memo, Anhui and Inner Mongolia did not ship subject merchandise during the POR. As also discussed in the Rescission Memo, the Department determined that Shanghai Xiuwei, Sichuan Dubao, and Wuhan should not be subject to this proceeding because all of their POR sales were already subject to ongoing new shipper reviews.

On May 16, 2003, we issued a supplemental questionnaire to Zhejiang. On June 10, 2003, we invited interested parties to comment on the Department's surrogate country selection and/or significant production in the potential countries, and to submit publicly-available information to value the factors of production. On June 20, 2003, we received Zhejiang's supplemental questionnaire response. On June 24, 2003, we received petitioners' comments on the selection of a surrogate country in this proceeding. Zhejiang did not comment on the selection of a surrogate country in this proceeding. On June 30, 2003, petitioners submitted comments on Zhejiang's supplemental questionnaire response. On July 7, 2003, we issued a second supplemental questionnaire to Zhejiang. On July 7, 2003, Zhejiang and petitioners submitted surrogate information with which to value the factors of production. On July 17, 2003, we received Zhejiang's comments on petitioners' July 7, 2003, surrogate value submission. On July 18, 2003, we received Zhejiang's second supplemental questionnaire response.

On July 25, 2003, the Department issued a final determination to rescind, in part, the administrative reviews of Anhui, Inner Mongolia, Shanghai Xiuwei, Sichuan Dubao, and Wuhan. *See Honey from the People's Republic of China: Final Rescission, in Part, of Antidumping Duty Administrative Review*, 68 FR 44045 (July 25, 2003). On July 25, 2003, the Department also determined to extend the time limits for these preliminary results. *See Honey from the People's Republic of China: Extension of Time Limit for Preliminary Results of First Antidumping Duty Administrative Review*, 68 FR 44046 (July 25, 2003).

Scope of the Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the merchandise under order is dispositive.

Verification

As provided in section 782(i)(2) of the Tariff Act of 1930, as amended (the Act), and section 351.307 of the Department's regulations, we conducted verification of the questionnaire and supplemental responses of Zhejiang. We used standard verification procedures, including on-site inspection of the production facility of Zhejiang's unaffiliated supplier. Our verification results are outlined in the Memorandum to the File, through Abdelali Elouaradia, Program Manager, Verification of U.S. Sales Information Submitted by Zhejiang Native Produce & Animal By-Products Import & Export Group Corporation (a.k.a. Zhejiang Native Produce and Animal By-Products Import & Export Corp.) (Zhejiang) and Factors of Production Information Submitted by Zhejiang's Unaffiliated Supplier, dated September 26, 2003 (Zhejiang Verification Report). A public version of this report is on file in the Central Records Unit (CRU) located in room B-099 of the Main Commerce Building.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review, Zhejiang requested a separate company-specific rate.

To establish whether a company is sufficiently independent in its export activities from government control to be entitled to a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*), and amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–22587 (May 2, 1994) (*Silicon Carbide*).

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See, e.g., Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less Than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

Zhejiang provided separate-rate information in its responses to our original and supplemental questionnaires. Accordingly, we performed a separate-rates analysis to

[3] On March 31, 2003, the Department issued a letter to Henan informing the company that it had failed to respond to our antidumping duty questionnaire issued on February 20, 2003. Additionally, we confirmed Henan's address and receipt of our March 31, 2003, letter. *See* Memorandum to The File from Angelica L. Mendoza, Case Analyst, First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China: Correct Addresses, dated March 31, 2003.

determine whether this exporter is independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996)).

As stated-above in the ''Background'' section, Kunshan and High Hope did not respond to the Department's antidumping questionnaire. Rather, as noted-above, these companies informed the Department that they would not be participating in this proceeding. Moreover, the Department did not receive any type of response from Henan, although we issued it a supplemental request for information as noted in the ''Background'' section above. Because none of these three companies responded to our request for information regarding separate rates, we preliminarily determine that these companies do not merit separate rates. *See, e.g., Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 57389 (November 6, 1996). Consequently, consistent with the statement in our notice of initiation, we find that, because these companies do not qualify for separate rates, they are deemed to be part of the PRC-entity. *See Administrative Review Initiation. See also* ''The PRC-wide Rate and Use of Facts Otherwise Available'' section below.

De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR 20588, 20589.

Zhejiang has placed on the record a number of documents to demonstrate absence of *de jure control*, including the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People'' (April 13, 1998) (*Enterprises Owned by the Whole People*), the ''Company Law of the People's Republic of China'' (December 29, 1993) (*Company Law*), ''Foreign Trade Law of the People's Republic of China'' (May 12, 1994) (*Foreign Trade Law*), and the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations'' (June 3, 1998) (*Legal Corporations Regulations*). *See* Exhibit 2 of Zhejiang's April 4, 2003, submission. In particular, we found that the PRC law, *Enterprises Owned by the Whole People*, grants enterprises owned by all the people status of a legal person which allows for autonomy in management and provides full responsibility over their profits and losses. Chapter III of this law outlines the rights and responsibilities of business enterprises owned by the whole people. Under Article 27 of this chapter, enterprises are granted the right to negotiate and sign contracts with foreign parties, and allowed to withdraw and use their portion of foreign exchange earnings. Zhejiang states that the *Company Law* governs the establishment of limited liability companies, and provides that such a company shall operate independently and be responsible for its own profits and losses. See page 6 of Zhejiang's April 4, 2003, submission. We reviewed Article 11 of Chapter II of the *Foreign Trade Law*, which states that ''foreign trade dealers shall enjoy full autonomy in their business operation and be responsible for their own profits and losses in accordance with the law.'' Moreover, in other proceedings, the Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. S*ee, e.g., Pure Magnesium from the People's Republic of China: Final Results of New Shipper Review*, 63 FR 3085, 3086 (January 21, 1998) and *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001).

Zhejiang submitted a copy of its business license in Exhibit 4 of its Section A questionnaire response, dated April 4, 2003. This license was issued by the Zhejiang Province Industrial and Commercial Administration Bureau. Zhejiang explains that its business license is necessary to register the company. Zhejiang affirms that its business operations are limited to the scope of the license, and that the license may be revoked if the company engages in illegal activities or if the company is found to have insufficient capital. At verification, we found that Zhejiang's business license and ''Certificate of Approval: For Enterprises with Foreign Trade Rights in the People's Republic of China'' were granted in accordance with the above-reference PRC laws. Moreover, the results of verification support the information provided regarding these PRC laws. *See* Zhejiang Verification Report at 4–5.

Therefore, consistent with our final determination in the less-than-fair-value investigation (LTFV), we preliminarily determine that there is an absence of *de jure* control over Zhejiang's export activities.

De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* at 22586–22587. Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Zhejiang has asserted the following: (1) it is a publicly-owned company that is independent from government control; (2) it sets prices through direct negotiations with U.S. customers, and such prices consider the company's total costs, including acquisition costs as well as movement expenses, overhead expenses and profit; (3) there is no government participation in its setting of export prices; (4) its Manager of the Bee Products Departments and authorized employees have the authority to bind sales contracts; (5) it does not have to notify any government authorities of its management selection; (6) there are no restrictions on the use of its export revenue and that its President decides how profits will be used; (7) it is responsible for financing its own losses; and (8) it is not required to sell any portion of foreign currency earned to the government.[4] Our analysis of the responses during verification reveals no other information indicating the existence of government control. *See* Zhejiang Verification Report at 6. Consequently, because evidence on the

[4] Zhejiang's questionnaire responses do not suggest that pricing is coordinated among exporters. Zhejiang states that its President is elected by the employees of the company, and in turn, the President selects the other management of the company. *See* Zhejiang's April 4, 2003, submission.

record indicates an absence of government control, both in law and in fact, over the company's export activities, we preliminarily determine that Zhejiang has met the criteria for the application of a separate rate.

The PRC-wide Rate and Use of Facts Otherwise Available

Zhejiang, Kunshan, Henan, and High Hope were given the opportunity to respond to the Department's questionnaire. As explained above, we received questionnaire responses from Zhejiang, and we have calculated a separate rate for Zhejiang. The PRC-wide rate applies to all entries of subject merchandise except for entries from PRC producers/exporters that have their own calculated rate.

As discussed above, Kunshan, Henan, and High Hope are appropriately considered to be part of the PRC-wide entity. Therefore, we determine it is necessary to review the PRC-wide entity because it did not provide information necessary to the instant proceeding. In doing so, we note that section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.[5]

According to section 776(b) of the Act, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action (SAA)* accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

As above stated, the PRC-wide entity did not respond to our requests for information. Because the PRC-wide entity did not respond to our request for information, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for the PRC-wide entity.

In addition, pursuant to section 776(b) of the Act, we find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with a request for information. As noted above, the PRC-wide entity informed the Department that it would not participate in this review, or otherwise, did not provide any response to the Department's questionnaire, despite repeated requests that it do so. Thus, because the PRC-wide entity refused to participate fully in this proceeding, we find it appropriate to use an inference that is adverse to the interests of the PRC-wide entity in selecting from among the facts otherwise available. By doing so, we ensure that the companies that are part of the PRC-wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. It is the Department's practice to assign the highest rate from any segment of a proceeding as total adverse facts available when a respondent fails to cooperate to the best of its ability. *See, e.g., Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002) (''Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available, we have applied a margin based on the highest margin from any prior segment of the proceeding.'').

In accordance with the Department's practice, we have preliminarily assigned to the PRC-wide entity (including Kunshan, Henan, and High Hope) the rate of 183.80 percent as adverse facts available. *See, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors from the People's Republic of China*, 64 FR 61581, 61584 (November 12, 1999). This rate is the highest dumping margin from any segment of this proceeding and was established in the LTFV investigation based on information contained in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey from the PRC*, 66 FR 50608 (October 4, 2001) and accompanying Issues and Decision Memorandum (*Final Determination*). In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

We note that information from a prior segment of this proceeding constitutes ''secondary information,'' and section 776(c) of the Act provides that, when the Department relies on such secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[6] The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. The SAA also clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished,*

[5] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority. Because the PRC-wide entity provided no information, we determine that sections 782(d) and (e) of the Act are not relevant to our analysis.

[6] Secondary information is described in the *SAA* as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See SAA* at 870.

from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) (TRBs), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

We note that in the LTFV investigation, the Department corroborated the information in the petition that formed the basis of the 183.80 percent PRC-wide entity rate. *See Final Determination*. Specifically, in the LTFV investigation, the Department compared the prices in the petition to the prices submitted by individual respondents for comparable merchandise. For normal value (NV), we compared petitioners' factor-consumption data to data reported by respondents. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 24101 (May 11, 2001).

In order to satisfy the corroboration requirements under section 776(c) of the Act, in the instant review, we reviewed the Department's corroboration of the petition rates from the LTFV investigation. *See* Memorandum to the File, dated December 10, 2003, placing the Memorandum to Richard O. Weible, Office Director, The Use of Facts Available for the PRC-wide entity; and Corroboration of Secondary Information, dated May 4, 2001 (AFA & Corroboration Memo) on the record of this administrative review. Following the methodology of our corroboration analysis from the LTFV investigation, we compared the petition information to information on the record of this proceeding. We find that the petition information is both reasonable and reliable when compared to the range of Zhejiang's reported gross unit prices for honey it sold to the United States during the current POR. *See* AFA & Corroboration Memo at 5 and Exhibit 7 of Zhejiang's July 18, 2003, submission. Moreover, following the methodology of our corroboration analysis from the LTFV investigation, the highest calculated NV for Zhejiang (calculated as a separate NV for each of its two processed honey suppliers) is comparable to the NV relied on by petitioners to calculate the petition rate. *See* AFA & Corroboration Memo at 6 and the Margin Calculation Output for Zhejiang, dated December 10, 2003.

We further note that, with respect to the relevance aspect of corroboration, the Department stated in *TRBs* that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.'' *See TRBs* at 61 FR 57392. *See also Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate used is the rate currently applicable to all exporters subject to the PRC-wide rate. Further, as noted above, there is no information on the record that the application of this rate would be inappropriate in this administrative review or that the margin is not relevant. Thus, we find that the information is relevant. Therefore, the Department preliminarily determines that the PRC-wide entity rate of 183.80 is still reliable, relevant, and has probative value within the meaning of section 776(c) of the Act.

Normal Value Comparisons

To determine whether Zhejiang's sales of the subject merchandise to the United States were made at prices below normal value, we compared their United States prices to normal values, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

For Zhejiang, we based United States price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated

customer in the United States. Where applicable, we deducted foreign inland freight, international freight, marine insurance expenses, and bank charges from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Zhejiang did not contest such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV for each of Zhejiang's processed honey suppliers. See Factors of Production Valuation Memorandum for the Preliminary Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China, dated December 10, 2003 (Factor Valuation Memo). A public version of this memorandum is on file in the CRU located in room B-099 of the Main Commerce Building.

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the LTFV investigation of this order and the final results of a recent new shipper review covering the subject merchandise, we determine that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise.[7] Accordingly, we valued the factors of production using publicly-available information from India.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. Where appropriate, we adjusted Indian import prices by adding foreign inland freight expenses to make them delivered prices. When we used Indian import values to value inputs sourced domestically by PRC suppliers, we added to Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). When we used non-import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the

[7] See Final Determination and Wuhan NSR Final Results.

site at which the input was used. When we relied on Indian import values to value inputs, in accordance with the Department's practice, we excluded imports from both NMEs and countries deemed to have generally available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) from our surrogate value calculations. For those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices for India, as published in the International Monetary Fund's publication, *International Financial Statistics*.

We valued the factors of production as follows:

To value raw honey, we continue to use the average of the highest and lowest price for one kilogram (kg.) of raw honey stated in an article published in *The Tribune of India* on March 1, 2000, entitled, ''Apiculture, a major foreign exchange earner'' (later republished in *The Agricultural Tribune* on May 1, 2000). Consistent with the methodology established in the previous proceeding, to account for raw honey price increases in India, we have inflated the average raw honey price from the March 2000, Tribune of India article (i.e., Rs. 35 per kg.) to December 2001 by dividing the Indian WPI for December 2001 by the Indian WPI for March 2000. *See Wuhan NSR Final Results* and accompanying Issues and Decision Memorandum at Comment 2. We note that pricing data submitted by petitioners in Exhibit 1 of their July 7, 2003, submission for Jallowal and Tiwana Bee Farms clearly indicate that inflating the March 2000, *Tribune of India* price data only by the WPI does not appropriately reflect the significant increase in Indian raw honey prices during the POR. Specifically, in reviewing the average raw honey purchase prices from Jallowal and Tiwana Bee Farms, we find that during the period December 2001, through May 2002, raw honey prices dramatically increased on a monthly basis in excess of the WPI. Therefore, to account for such increases in Indian raw honey prices from December 2001, through May 2002, in excess of inflation, we averaged raw honey purchase prices from the Tiwana and Jallowal Bee Farms submitted by petitioners in Exhibit 1 of their July 7, 2003, submission to calculate a total average raw honey price for each month from December 2001, through May 2002. Next, we calculated monthly price increases on a percentage-basis, and then applied these price increases (percentage) to our adjusted raw honey price from the March 2000, *Tribune of India* article. Then, we calculated a simple average of these adjusted monthly raw honey prices to derive our raw honey surrogate value for the period for which we had raw honey purchase pricing data (*i.e.*, December 1, 2001, through May 31, 2002). In order to make this value fully-contemporaneous to the POR, we further adjusted the raw honey surrogate value for inflation during the period of June 2002, through November 2002 based on the Indian WPI. Finally, we converted the raw honey value from a per kg.-basis to a per metric ton-(MT) basis. See Attachments 2 and 3 of the Factor Valuation Memo for further details. The Department intends to continue to carefully examine this issue for the final results of this review and invites interested parties to submit comments on this issue for purposes of the final results.

To value beeswax, a raw honey by-product, we used the average per kilogram import value of beeswax into India for the POR under the Indian Customs' heading of ''152190'' obtained from the World Trade Atlas, which notes that its data was obtained from the Ministry of Commerce of India (World Trade Atlas). To value scrap honey, a raw honey by-product, we used the average per kilogram import value of inedible molasses into India for the POR under the Indian Customs' heading of ''170390'' obtained from the World Trade Atlas. We converted the surrogate values for beeswax and scrap honey from a per kg.-basis to a per MT-basis.

To value coal, we relied upon contemporaneous Indian import values of ''steam coal'' under the Indian Customs' heading of ''2701011902'' obtained from the World Trade Atlas. We also adjusted the surrogate value for coal to include freight costs incurred between the supplier and the factory. To value electricity, we used the 2000 total average price per kilowatt hour, adjusted for inflation, for ''Electricity for Industry'' as reported in the International Energy Agency's publication, *Energy Prices and Taxes, Second Quarter*, 2002. To value water, we used the water tariff rate, as reported on the Municipal Corporation of Greater Mumbai's website. *See* http://www.mcgm.gov.in/Stat%20&%20Fig/Revenue.htm and Attachment 6 of the Factor Valuation Memo for source documents.

To value packing materials (*i.e.*, paint and steel drums), we relied upon contemporaneous Indian import data reported by the World Trade Atlas under the Indian Customs' heading ''3209,'' and a price quote from an Indian steel drum manufacturer, respectively. We adjusted the surrogate value for steel drums to reflect inflation. We also adjusted the surrogate values of packing materials to include freight costs incurred between the supplier and the factory.

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied upon publicly-available information in the 2001–2002 annual report of the Mahabaleshwar Honey Producers Cooperative Society, Ltd. (MHPC), a producer of the subject merchandise in India. We applied these rates to the calculated cost of manufacture and cost of production using the same methodology established in *Wuhan NSR Final Results*.

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics* 2001, International Labour Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing.

To value truck freight, we used an average truck freight cost based on Indian market truck freight rates on a per MT basis published in the *Iron and Steel Newsletter*, April 2002. To value rail freight, we used an average rail freight cost based on rail freight costs of transporting molasses to various cities within India as stated on the Indian Railways' website (Indian Government Agency).

To value marine insurance expenses, where necessary, we used publicly-available price quotes from a marine insurance provider at http://www.rigconsultants.com/insurance/html.

For details on factor of production valuation calculations, see Factor Valuation Memo.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Exporter	POR	Margin (percent)
Zhejiang Native Produce & Animal By-Products Import & Export Corporation a.k.a. Zhejiang Native Produce & Animal By-Products Import & Export Group Corporation	02/10/01 - 11/30/02	77.09
PRC-wide Entity (including Kunshan, Henan, and High Hope)	02/10/01 - 11/30/02	183.80

For details on the calculation of the antidumping duty weighted-average margin for Zhejiang, *see* the Analysis Memorandum for the Preliminary Results of the First Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China, dated December 10, 2003. A public version of this memorandum is on file in the CRU.

Assessment Rates

Pursuant to section 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.50 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total quantity of the sales to that importer. If these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the total quantity for the subject merchandise on each of Zhejiang's importer's/customer's entries during the POR.

Cash-Deposit Requirements

The following cash-deposit rates will be effective upon publication of the final results of this review for all shipments of honey from the PRC entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Zhejiang, the cash-deposit rate will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period (except for Kunshan, Henan, and High Hope, whose cash-deposit rates have changed in this review to the PRC-wide entity rate as noted below); (3) the cash-deposit rate for all other PRC exporters (including Kunshan, Henan, and High Hope) will be the ''PRC-wide'' rate established in the final results of this review; and (4) the cash deposit rate for all other non-PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of issues raised in the briefs, not later than 120 days after the date of publication of this notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.This administrative review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: December 10, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31017 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427–818]

Low Enriched Uranium from France: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Carol Henninger at (202) 482–1756 or (202) 482–3003, respectively; Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

Eurodif S.A. (Eurodif), a French producer of subject merchandise, and its affiliated parties Compagnie Générale Des Matières Nucléaires (COGEMA) and COGEMA, Inc. (collectively, COGEMA/Eurodif), requested an administrative review of the antidumping order on low enriched uranium from France on February 3, 2003. United States Enrichment Corporation and USEC, Inc. (the petitioner), a domestic producer of subject merchandise, requested a review on February 28, 2003. On March 25, 2003, the Department published a notice of initiation of the administrative review, covering the period July 13, 2001, through January 31, 2003, (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394). On October 27, 2003, the Department published a notice extending the time limit for the preliminary results, (*Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 61184). The preliminary results are currently due no later than December 18, 2003. On November 18, 2003, the petitioner filed comments for the Department's consideration prior to the preliminary results. On December 1, 2003, COGEMA/Eurodif responded to those comments.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the revised time limit due to the complex issues that have been raised. Examples of issues that must be considered include the proper treatment of commingled merchandise, the appropriateness of granting a constructed export price (CEP) offset, and the application of the major input rule. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than January 20, 2004. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: December 9, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 03–31020 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–813]

Stainless Steel Butt-Weld Pipe Fittings From Korea; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results Antidumping Duty Administrative Review.

SUMMARY: On September 29, 2003, the Department of Commerce (the Department) published the preliminary results and partial rescission of antidumping duty administrative review on stainless steel butt-weld pipe fittings from Korea. The review, as initiated, covered three manufacturers/exporters, Sam Sung Stainless Commerce & Ind. Co., Ltd. (Sam Sung), Sungkwang Bend Co., Ltd. (Sungkwang), and TK Corporation. However, along with the preliminary results we rescinded the review with respect to Sungkwang and TK Corporation because the only party that requested a review of these two companies withdrew the request in a timely manner. Therefore these final results of review cover only Sam Sung. The period of review is February 1, 2002 through January 31, 2003. We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Furthermore, the Department made no changes in its analysis following publication of the preliminary results. Therefore, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2924 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2003 the Department published its preliminary results and partial rescission of antidumping duty administrative review of stainless steel butt-weld pipe fittings from Korea. *See Stainless Steel Butt-Weld Pipe Fittings from Korea; Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 55935 (September 29, 2003) (*Preliminary Results*). In that notice we rescinded the review with respect to SungKwang and TK Corporation because the only party that requested the review of these companies withdrew the request in a timely manner. We also assigned Sam Sung an adverse facts available rate because it withheld information the Department requested by refusing to respond to the Department's antidumping questionnaire. We gave interested parties an opportunity to comment on our preliminary results. No parties submitted comments. We have now completed the administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act).

Period of Review

The period of review (POR) is February 1, 2002 through January 31, 2003.

Scope of the Review

The products subject to this review are certain welded stainless steel butt-weld pipe fittings (pipe fittings), whether finished or unfinished, under 14 inches in inside diameter.

Pipe fittings are used to connect pipe sections in piping systems where

conditions required welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, and the following five are the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Use of Facts Available

For the reasons set forth in our preliminary results we continue to find that application of an adverse facts available rate of 21.20 percent to Sam Sung is appropriate. *See Preliminary Results* at 55936–37.

Final Results of Review

As a result of our determination that it is appropriate to apply adverse facts available to Sam Sung, we determine that a weighted-average dumping margin of 21.20 percent exists for Sam Sung for the period February 1, 2002 through January 31, 2003.

The Department will determine, and U.S. Customs and Border Protection (Customs) shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of these final results of review. We will direct Customs to assess the resulting assessment rate against the entered customs values for the subject merchandise on each entry during the review period.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 21.20 percent, the ''all others'' rate established in the LTFV investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea*, 57 FR 61881, 61882 (December 29, 1992).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 9, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31018 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and final rescission in part of the antidumping duty administrative review of certain stainless steel butt-weld pipe fittings from Taiwan.

SUMMARY: On July 8, 2003, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the administrative review of the order on certain stainless steel butt-weld pipe fittings from Taiwan. See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 68 FR 40637 (July 8, 2003) (''Preliminary Results''). This review covers one manufacturer/exporter of the subject merchandise. The period of review (''POR'') is June 1, 2001 through May 31, 2002.

We gave interested parties an opportunity to comment on the preliminary results. Based upon our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results of this review. The final weight-averaged dumping margin is listed below in the section titled ''Final Results of the Review.''

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Jon Freed, Laurel LaCivita or Robert Bolling, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–3818, 202–482–4243, or 202–482–3434, respectively, fax 202–482–0865.

SUPPLEMENTARY INFORMATION:

Background

The Department's preliminary results of review were published on July 8, 2003. *See Preliminary Results.* On September 8, 2003, petitioners [1]

[1] Markovitz Enterprises, Inc. (Flowline Division), Shaw Alloy Piping Products Inc., Gerlin, Inc., and

submitted pre-verification comments. From September 12–September 19, 2003, the Department conducted the home market sales verification of the questionnaire responses of Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen'') and Ta Chen International, Inc. (''TCI''). From September 22–September 25, 2003, the Department conducted the U.S. sales verification of the questionnaire responses of Ta Chen and TCI. On October 24, 2003, the Department extended the final results of this review by 35 days until December 10, 2003. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Extension of Final Results of Antidumping Duty Administrative Review,* 68 FR 60915, (October 24, 2003). We invited parties to comment on the *Preliminary Results.* We received written comments on October 29, 2003 from petitioners and from Ta Chen. On November 5, 2003, we received rebuttal comments from petitioners and Ta Chen. On November 12, 2003, we received a supplemental brief from petitioners covering issues relating to verification exhibits that were not served on them until November 3, 2003. On November 12, 2003, we received a letter from Ta Chen clarifying its initial brief filed on October 29, 2003. On November 17, 2003, we received comments from Ta Chen rebutting petitioners' supplemental brief filed on November 12, 2003.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products subject to this administrative review are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings (''pipe fittings'') are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''Elbows'', ''tees'', ''reducers'', ''stub ends'', and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from this review. The pipe fittings subject to this review are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Partial Rescission of Review

In the *Preliminary Results,* the Department issued a notice of intent to rescind the review with respect to Liang Feng Stainless Steel Fitting Co., Ltd. (''Liang Feng''), and Tru-Flow Industrial Co., Ltd. (''Tru-Flow'') as we found that there were no entries of subject merchandise during the POR. *See Preliminary Results* at 40638–40639. On September 17, 2003, the Department conducted a sales verification at the offices and production facilities of Tru-Flow and found no information inconsistent with their response that they had no shipments to the United States. *See Verification of Tru-Flow Industrial Co., Ltd. in the Antidumping Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan,* (October 22, 2003). As the Department received no comments on this issue and no additional evidence has arisen, the Department is rescinding the review with respect to Liang Feng and Tru-Flow.

Analysis of Comments Received

All issues raised in the case briefs, as well as the Department's findings, in this administrative review are addressed in the *Issues and Decision Memorandum for the Administrative Review of Stainless Steel Butt-Weld Pipe Fittings from Taiwan: June 1, 2001 through May 31, 2002* (*''Decision Memorandum''*), dated December 10, 2003, which is hereby adopted by this notice. A list of the issues raised and to which we have responded, all of which are in the *Decision Memorandum,* is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://www.ia.ita.doc.gov.* The paper copy and electronic version of the public version of the *Decision Memorandum* are identical in content.

Sales Below Cost in the Home Market

As discussed in more detail in the *Preliminary Results,* the Department disregarded home market below-cost sales that failed the cost test in the final results of review.

Changes Since the Preliminary Results

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum,* is attached to this notice as Appendix I. Based on our analysis of the comments received, we have made certain changes in the margin calculation, as discussed in the *Decision Memorandum,* accessible in B–099. The changes are as follows:

- The Department has adjusted the values reported for home market packing and U.S. packing to reflect the minor correction to Ta Chen's packing labor ratio.
- The Department has adjusted the values reported for home market indirect selling expenses for home market sales.
- The Department has included in the indirect expenses incurred in the home market for U.S. sales (''DINDIRSU'') that were reported but not used in the preliminary results of review. *See* Comment 8 of the *Decision Memorandum.*
- The Department has adjusted the reported values for marine insurance, harbor maintenance fee, and United States customs duty for one invoice in the U.S. sales listing to reflect a minor correction made at verification.
- The Department has adjusted the U.S. repacking expense and the warehouse expenses for all sales out of TCI inventory to reflect the minor correction made at verification.
- The Department has adjusted the imputed credit expense for U.S. sales that are shipped directly from Taiwan to the unaffiliated customer to reflect changes explained in Comment 7 of the *Decision Memorandum* accompanying this notice.
- The Department has adjusted the U.S. indirect selling expense calculation to include TCI's cost of financing.

Final Results of the Review

We determine that the following percentage weighted-average margin exists for the period June 1, 2001 through May 31, 2002:

Taylor Forge Stainless, Inc., collectively (''petitioners'').

CERTAIN STAINLESS STEEL BUTT-WELD PIPE FITTINGS FROM TAIWAN

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
Ta Chen	1.27

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. We will direct the CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's entries during the review period. For duty assessment purposes, we calculated importer-specific assessment rates by dividing the dumping margins calculated for each importer by the total entered value of sales for each importer during the POR.

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain SSBWPF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication: (1) The cash deposit rate for Ta Chen will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers shall continue to be 51.01 percent.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 10, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I.—List of Issues for Discussion

Comment 1: Adverse Facts Available (''AFA'')
Comment 2: Ta Chen's Affiliation with PFP Taiwan
Comment 3: Constructed Export Price (''CEP'') Offset
Comment 4: Date of Sale
Comment 5: Classification of Home Market Sales
Comment 6: Employee Bonuses and Compensation for Directors and Supervisors Recorded in Stockholders' Equity on the Balance Sheet
Comment 7: Selling Expenses Associated with Sales Returns in the U.S. Market
Comment 8: Home Market Indirect Selling Expenses Incurred for Sales to the United States
Comment 9: Home Market Inventory Carrying Costs Associated with U.S. Sales
Comment 10: The Inclusion of Time on the Water in U.S. Inventory Carrying Costs
Comment 11: U.S. Indirect Selling Expenses
Comment 12: Short-term Borrowing Rate for Imputed Credit in the United States
Comment 13: CEP Profit
Comment 14: Wire Transfer Fee for Payments from TCI to Ta Chen
Comment 15: U.S. Inventory Carrying Costs
Comment 16: Weighted-Average Direct Selling Expenses for U.S. Stock Sales

[FR Doc. 03–31021 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583–830]

Preliminary Rescission of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the Preliminary Rescission of Antidumping Duty Administrative Review of Stainless Steel Plate in Coils from Taiwan.

SUMMARY: On July 1, 2003, the Department of Commerce (''Department'') published a notice of initiation of an antidumping duty administrative review on stainless steel plate in coils from Taiwan. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* (''*Notice of Initiation*'') 68 FR 39055 (July 1, 2003). This review covers two manufacturers/exporters of the subject merchandise, Yieh United Steel Corporation (''YUSCO''), a Taiwan producer and exporter of subject merchandise, and Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen''), a Taiwan producer and exporter of subject merchandise. The period of review (''POR'') is May 1, 2002 through April 30, 2003. We are preliminarily rescinding this review based on evidence on the record indicating that there were no entries into the United States of subject merchandise during the POR from the respondents.

EFFECTIVE DATE: December 16, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Lilit Astvatsatrian, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–3207 or 202–482–6412, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1999, the Department of Commerce (''Department'') published the antidumping duty order on stainless steel plate in coils from Taiwan. *See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 FR 27756 (May 21, 1999). On May 1, 2003, the Department published a notice of opportunity to request an administrative review of this order for the period May

1, 2002 through April 30, 2003. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 68 FR 23281 (May 1, 2003). On May 30, 2003, petitioners[1] timely requested that the Department conduct an administrative review of sales by YUSCO, a Taiwan producer and exporter of subject merchandise, and Ta Chen, a Taiwan producer and exporter of subject merchandise. On July 1, 2003, in accordance with section 751(a) of the Tariff Act of 1930 as amended (''the Act''), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by YUSCO and Ta Chen for the period May 1, 2002 through April 30, 2003. *See Notice of Initiation*.

On July 3, 2003, the Department issued its antidumping duty questionnaire to YUSCO and Ta Chen. On August 19, 2003, Ta Chen stated that it did not have any U.S. sales or exports of subject merchandise during the POR, and requested that it should be excluded from answering the Department's questionnaire. On August 20, 2003, YUSCO stated that it did not have any U.S. sales, shipments or entries of subject merchandise during the POR. On August 21, 2003, petitioners urged the Department to instruct Ta Chen and YUSCO to submit a completed Section A questionnaire response and alleged that Ta Chen and YUSCO are affiliated with other companies that may have shipped subject merchandise to the United States during the POR. On September 8, 2003, we sent an inquiry to U.S. Customs and Border Protection (''CBP'') to confirm that YUSCO and Ta Chen had no shipments of subject merchandise into the United States during the POR. CBP did not indicate that there were any entries of subject merchandise by Ta Chen or YUSCO during the POR.

On March 11, 2003, the Department amended the scope of the antidumping duty orders to remove the original language from the scope which excluded cold-rolled stainless steel plate in coils, in accordance with the Court of International Trade's (''CIT'') decision in *Allegheny Ludlum Corp. v. United States*, 287 F.3d 1365 (Fed. Cir. 2000). *See Notice of Amended Antidumping Duty Orders: Certain Stainless Steel Plate in Coils from Belgium, Cananda, Italy, the Republid of Korea, South Africa, and Taiwan*, 68 FR 11520, (March 11, 2003) (''Scope of the Review''). Therefore, the new scope was effective March 11, 2003. *See*Scope of the Review below.

Scope of the Review

Effective: May 1, 2002 through March 10, 2003

For purposes of this review, the product covered is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this petition are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219110030, 7219110060, 7219120005, 7219120020, 7219120025, 7219120050, 7219120055, 7219120065, 7219120070, 7219120080, 7219310010, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220110000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Effective March 11, 2003, and in accordance with the CIT's December 12, 2002 opinion in *Allegheny Ludhum Corp. v. United States*, the scope of the order is as stated below:

Effective: March 11, 2003 through April 30, 2003

The product covered by these orders is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to these orders is dispositive.

Period of Review

The POR is May 1, 2002 through April 30, 2003.

Preliminary Rescission of Review in Part

Pursuant to 19 CFR 351.213(d)(3) of the Department's regulations, the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. Both Ta Chen and YUSCO certified on the record that they did not export subject merchandise to the United States during the POR. The Department

[1] Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization are collectively ≥petitioners≥ for this review.

then conducted a CBP inquiry. The result of the CBP inquiry affirmed Ta Chen and YUSCO's claims that there were no entries of subject merchandise during the POR.

Petitioners allege Ta Chen and YUSCO were affiliated with other Taiwanese companies during the POR. *See* Petitioners submission to the Department, dated August 21, 2003. However, the Department has preliminarily determined to rescind this administrative review absent evidence of any entries during the POR. The parties being reviewed in this case are Ta Chen and YUSCO, not the other parties which have been alleged to be affiliated with Ta Chen and YUSCO. Neither the petitioners nor any other party requested an administrative review of Ta Chen's or YUSCO's alleged affiliates. Therefore, absent entries, there is no reason for the Department to conduct an affiliation analysis. If the petitioners believe in future periods of review that other parties potentially affiliated with Ta Chen and YUSCO have exported subject merchandise to the United States, then a review covering those subsequent periods of reviews for those companies should be requested.

The Department is satisfied, after a review of information on the record, certification from YUSCO and Ta Chen of no exports to the United States during the POR and the inquiry on data from CBP, that there were no entries of Ta Chen and YUSCO's stainless steel plate in coils during the POR to the United States. Therefore, the Department is preliminarily rescinding this administrative review. The cash deposit rate for YUSCO will remain at 8.02 percent, for Ta Chen the cash deposit rate will remain at 10.20 percent, and for ''all other'' producers/exporters of the subject merchandise the cash deposit rate will remain at 7.39 percent, the rates established in the most recently completed segment of this proceeding. *See Notice of Final Results and Rescission in Part of Antidumping Duty Administrative Review: Stainless Steel Plate in Coils From Taiwan*, 68 FR 63067 (November 7, 2003).Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to this preliminary rescission. Case briefs must be submitted within 30 days after the date of publication of this notice and rebuttal briefs, limited to arguments raised in the case briefs, must be submitted no later than 7 days after the time limit for filing case briefs. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

This administrative review and notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 9, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–31015 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111403B]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys off the Northern Yucatan Peninsula in the Gulf of Mexico

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys off the northern Yucatan Peninsula in the Gulf of Mexico. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than January 15, 2004.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications* Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines ''harassment'' as:

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

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

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the

incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 8, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, a seismic survey will be conducted in the Gulf of Mexico off the northern Yucatan Peninsula. The Gulf of Mexico research cruise will be off the coast of the northern Yucatan Peninsula in an area extending between 21° to 22.5° N and 88° to 91° W from March 7, 2004 to April 4, 2004. The operations will partly take place in the Exclusive Economic Zone (EEZ) of Mexico.

The purpose of the project is to study the Chicxulub Crater. The Chicxulub Crater was formed 65 million years ago when a massive meteor crashed into the Yucatan Peninsula of Mexico leaving behind the crater with a diameter of about 150 km (93 mi). The well-known massive extinction event at the Cretaceous-Tertiary (K–T) boundary appears to have been caused, at least in part, by this impact. It is also the only large terrestrial impact crater with a well preserved topographic peak ring. The Chicxulub Crater is uniquely suited for a seismic investigation into the deformation mechanisms of large diameter impacts in general and the physical parameters of the K–T impact in particular. The goals are to: (1) Determine the direction of approach and angle of the Chicxulub impact through the collaborative seismic and modeling effort, (2) map the deformation recorded in the upper crust near the crater center that may yield important information about the kinematics of large bolide impacts, (3) image the peak ring and other morphologic features in the northwest quadrant of the crater to further understand the physical parameters of the Chicxulub impact structure, and (4) model the 3–D collapse of an asymmetric transient crater to help better understand the mechanics of large impact craters and to quantify the environmental effects of the K–T impact.

Description of the Activity

The seismic survey will involve one vessel, the *R/V Maurice Ewing*. It will deploy an array of 20 airguns as an energy source, plus a 3 to 6–km (1.6 to 3.2 n.mi.) towed hydrophone streamer. As the airgun array is towed along the survey line, the towed hydrophone streamer or Ocean Bottom Seismometers (OBSs) will receive the returning acoustic signals and transfer the data to the on-board processing system. Water depths within the study area range are less than 100 m (328 ft) and almost all of the survey will be conducted in water depths less than 50 m (164 ft).

The procedures to be used for the seismic study will be similar to those used during previous seismic surveys by LDEO in the equatorial Pacific Ocean (Carbotte et al., 1998, 2000). The proposed seismic surveys will use conventional seismic methodology, with a towed airgun array as the energy source and a towed hydrophone streamer and/or OBSs as the receiver system. The energy to the airgun array is compressed air supplied by compressors on board the source vessel.

During the airgun operations, the vessel will travel at 7.4–9.3 km/hr (4–5 knots), and seismic pulses will be emitted at intervals of 60–90 sec (OBS lines) and approximately 20 sec Multi-Channel Seismic profiles (MCS lines). The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft). The 60–90 sec spacing along OBS lines is to minimize reverberation from previous shot noise during OBS data acquisition, and the exact spacing will depend on water depth. The 20–airgun array will include airguns ranging in chamber volume from 80 to 850 in3. These airguns will be spaced in an approximate rectangle of dimensions of 35 m (115 ft) across track by 9 m (30 ft) along track.

Along the selected lines, the OBSs will be positioned on the ocean bottom by the *Maurice Ewing*. After each line is shot, the *Maurice Ewing* will retrieve the OBSs, download the data, and refurbish the units before redeploying the OBSs along the next line that will be shot. During the Yucatan cruise, there will be three deployments of OBSs.

In addition to the operations of the airgun array, the ocean floor will be mapped continuously throughout the entire cruise with an Atlas Hydrosweep DS–2 multibeam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler. Both of these sound sources will be operated simultaneously with the airgun array.

The Atlas Hydrosweep is mounted on the hull of the *Maurice Ewing*, and it operates in three modes, depending on the water depth. There is one shallow water mode and there are two deep-water modes: an Omni mode and a Rotational Directional Transmission mode (RDT).

The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5 kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1μPa, 800 watts, while nominal source output is 200 dB re 1 μPa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Additional information on the airgun arrays, bathymetric sonars, and sub-bottom profiler specifications is also contained in the application (see **ADDRESSES**) and in previous **Federal Register** notices (April 14, 2003, 68 FR 17909, and September 17, 2003, 68 FR 54421).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Gulf of Mexico near the northern Yucatan Peninsula and its associated marine mammals can be found in the LDEO application and a number of documents referenced in the LDEO application, and is not repeated here. In the Gulf of Mexico near the Yucatan Peninsula, 29 marine mammal species are known to occur within the proposed study area. The species included in this application are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), Sowerby's beaked whale (*Mesoplodon densirostris*), Gervais' beaked whale (*Mesoplodon europaeus*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), Fraser's dolphin (*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), long-finned pilot whale (*Globicephala*

melas), North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and blue whale (*Balaenoptera musculus*). Seven of these species are listed as endangered under the U.S. Endangered Species Act (ESA): sperm, North Atlantic right, humpback, sei, fin, and blue whales, as well as West Indian manatee. Also, one species of pinniped, the hooded seal (Cystophora cristata), could potentially be encountered during the proposed seismic surveys. Additional information on most of these species is available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*.

Potential Effects on Marine Mammals

NMFS' April 14, 2003, **Federal Register** notice (68 FR 17909) describes generally the anticipated effects of the Ewing's airguns and multibeam bathymetric sonar on marine mammals, including masking, behavioral disturbance, and potential hearing impairment and other physical effects. Possible effects of the sub-bottom profiler used in the projects are described in the previously mentioned **Federal Register** notices (68 FR 44291, July 28, 2003). The LDEO application for operations in Yucatan also provides information on what is known about the effects of LDEO's planned seismic survey on marine mammals. Past **Federal Register** notices for other LDEO seismic surveys include July 28, 2003 (68 FR 44291), August 26, 2003 (68 FR 51240), September 12, 2003 (68 FR 53714), September 17, 2003 (68 FR 54421), and October 21, 2003 (68 FR 60086).

Estimates of Take for the Northern Yucatan Peninsula Cruise

NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 μPa root-mean-squared (rms). The rms pressure is an average over the pulse duration. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene 1997; McCauley et al. 1998, 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize the possibility of Level A harassment. LDEO has calculated the ''best estimates'' for the numbers of animals that could be taken by level B harassment during the proposed seismic survey at the northern Yucatan Peninsula using data on marine mammal abundance from a previous survey region, as shown in the predicted RMS radii table.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 20–gun array planned to be used for this project. The anticipated radius of influence of the multibeam sonar is less than that for the airgun array, so it is assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multibeam sonar.

The following table explains the corrected density estimates as well as the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB.

Species	''Best Estimate'' of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB)	% of North Atlantic Population	''Maximum Estimate'' of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB)
PHYSETERIDAE			
Sperm whale	0	0	0
Dwarf/Pygmy sperm whale	0	0	0
ZIPHIIDAE	0	0	0
Cuvier's beaked whale	0	0	0
Sowerby's beaked whale	0	0	0
Gervais' beaked whale	0	0	0
Blainville's beaked whale	0	0	0
DELPHINIDAE			
Rough-toothed dolphin	295 (85)	N.A.	443 (128)
Bottlenose dolphin	9107 (2631)	N.A.	13,660 (3946)
Pantropical spotted dolphin	436 (126)	<0.7	654 (189)
Atlantic spotted dolphin	988(285)	<1.8	1481 (428)
Spinner dolphin	26 (7)	<0.2[a]	38 (11)
Clymene dolphin	0	0	0
Striped dolphin	0	0	0
Short-beaked common dolphin			
Long-beaked common dolphin			
Fraser's dolphin	6 (1)	N.A.	10(2)
Risso's dolphin	6 (1)	0	10(2)
Melon-headed whale	6 (1)	0.1[a]	10(2)
Pygmy killer whale	0	0	0
False killer whale	359 (104)	N.A.	539 (156)
Killer whale	6 (1)	0.1	10(2)
Short-finned pilot whale	205 (59)	0	308 (89)
Long-finned pilot whale			
MYSTICETES			
North Atlantic right whale	0	0	0
Humpback whale	0	0	0
Minke whale	0	0	0
Bryde's whale	0	0	0
Sei whale	0	0	0

Species	''Best Estimate'' of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB)	% of North Atlantic Population	''Maximum Estimate'' of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB)
Fin whale	0	0	0
Blue whale	0	0	0
PINNIPED			
Hooded seal	0	0	0

[a] % of Gulf of Mexico population. N.A. = not available.

Conclusions- Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 8 km (4.3 nm) and occasionally as far as 30 km (16.2 nm) from the source vessel. In Arctic waters, some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes and, even for bowheads, may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen in the vicinity of seismic vessels. There are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes will sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment.

The numbers of odontocetes that may be harassed by the proposed activities are small relative to the population sizes of the affected stocks. A maximum of 13660, 1481, and 654 bottlenose, Atlantic spotted, and pantropical spotted dolphins, respectively, (the most abundant delphinids in the proposed survey area) are expected to be exposed to seismic sounds greater than or equal to 160 dB. However, the best estimates for bottlenose, Atlantic spotted, and pantropical spotted dolphins are 9107, 988, and 436, respectively. This represents zero to 1.8 percent of the North Atlantic populations of these species based on population estimates. However, these dolphin species surveys have not been conducted for most of their range in the North Atlantic Ocean and adjacent waters. Therefore the true percentages of the populations that might be exposed to seismic sounds greater than or equal to 160 dB are likely to be much less than 1.8 percent, as the population sizes and the zero to 1.8 percent are based on only a small fraction of their range and their actual population sizes are much larger.

In light of the type of take expected and the small percentages of affected stocks, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals. In addition, mitigation measures such as controlled vessel speed, course alteration, look-outs, ramp-ups, and power-downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions- Effects on Pinnipeds

Pinnipeds are not expected to be encountered during the proposed seismic survey at the northern Yucatan Peninsula in the Gulf of Mexico. However, a conservative estimate of a maximum of 5 hooded seals may be affected by a portion of the proposed survey in the Gulf of Mexico if they are encountered. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. If hooded seals were encountered, the proposed seismic survey would have, at most, a short-term effect on their behavior, falling within the definition of Level B harassment. The action would therefore have no more than a negligible impact on the affected species or stocks of pinnipeds.

Mitigation

The following mitigation measures are proposed for the subject seismic surveys, provided that they do not compromise operational safety requirements: (1) Speed and course alteration; (2) power-down and shut-down procedures; and (3) ramp-up procedures. Mitigation also includes marine mammal monitoring in the vicinity of the arrays. These mitigation measures are further described here.

These mitigation measures will incorporate use of established safety radii which are equal to 1.5 times the distance from the arrays where sound levels ≥190 and 180 dB re 1 μPa rms (the criteria for onset of Level A harassment for pinnipeds and cetaceans respectively) are predicted to be received. LDEO has modeled the sound pressure fields for the 20–gun array in relation to distance and direction from the airguns and predicts that the 190–dB and 180–dB distance from the airgun array will be 275 ft (902 m) and 900 ft (2935 m) respectively.

The directional nature of the 20–airgun array to be used in this project is also an important mitigating factor. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

Speed and Course Alteration

If a marine mammal is detected outside the appropriate safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Power-down and Shut-down Procedures

Airgun operations will be powered-down (or shut-down) immediately when cetaceans or pinnipeds are seen within or about to enter the appropriate safety radius. If a marine mammal is detected outside the safety radius but is likely to enter the safety radius, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be powered-down immediately. If a marine mammal is seen within the appropriate safety radius of the array while the guns are powered-down, airgun operations will be shut-down. For the power-down procedure for the 20–gun array, one 80 in^3 airgun will continue to be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until any marine mammal has cleared the safety radius. The mammal has cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the zone for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked and bottlenose whales).

Ramp-up Procedure

When airgun operations with the 20–gun array commence after a certain period without airgun operations, the number of guns firing will be increased gradually, or ''ramped up'' (also described as a ''soft start''). Operations will begin with the smallest gun in the array (80 in^3). Guns will be added in sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–min period over a total duration of approximately 25 minutes. Throughout the ramp-up procedure, the safety zone for the full 20–gun array will be maintained. Given the presence of the streamer and airgun array behind the vessel, the turning rate of the vessel with trailing streamer and array is no more than five degrees per minute, limiting the maneuverability of the vessel during operations.

The ''ramp-up'' procedure will be required under the following circumstances. Under normal operational conditions (vessel speed 4 knots, or 7.4 km/hr), a ramp-up would be required after a power-down or shut-down period lasting about 8 minutes or longer if the *Ewing* was towing the 20–gun array. At 4 knots, the source vessel would travel 900 m (2953 ft) during an 8–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, it is proposed that a ramp-up would be required after a ''no shooting'' period lasting 10 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 900 m (3117 ft) in 10 minutes. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun has been firing continuously during the interruption of seismic activity.

Comments on past proposed IHAs raised the issue of prohibiting nighttime operations as mitigation. However, this is not practicable due to cost considerations. The daily cost to the federal government to operate vessels such as Ewing is approximately $33,000 to $35,000/day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, it is possible that each trip would require an additional three to five days, or up to $175,000 more, depending on average daylight at the time of work.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has determined that the proposed mitigation ensures that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns (at least one hour in advance), thereby giving them an opportunity to avoid the approaching array; if ramp-up is required after an extended power-down, two marine mammal observers will be required to monitor the safety radii using night vision devices for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible; and ramp-up may occur at night only if one airgun with a sound pressure level of at least 180 dB has been maintained during interruption of seismic activity. Therefore it is likely that the 20–gun array will not be ramped-up from a shut-down at night.

Marine Mammal Monitoring

LDEO must have at least two observers on board the vessel, and at least one must be an experienced marine mammal observer that NMFS approves. These observers will monitor marine mammals near the seismic source vessel during all daytime airgun operations and during any nighttime start-ups of the airguns. During daylight, vessel-based observers will watch for marine mammals near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after an extended shut-down.

The observers will be on duty in shifts of no longer than 4 hours. The second observer must also be on watch part of the time, including the 30–minute periods preceding startup of the airguns and during ramp-ups. Use of two simultaneous observers will increase the likelihood that marine mammals near the source vessel are detected. LDEO bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are not on duty.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Maurice Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210° arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observer(s) will systematically scan the area around the vessel with reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal is in or near the safety radii so that the required mitigation measures, such as course alternation and power-down or shut-down, can be implemented. If the airguns are powered or shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this time and will call for the airguns to be powered-down if marine mammals are observed in or

about to enter the safety radii. If the airguns are ramped-up at night, two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using night vision equipment that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Comments on past proposed IHAs suggested that NMFS require the use of passive acoustic monitoring, which is generally more effective than visual observations. Shipboard passive acoustics would not allow those on board the vessel to determine a marine mammal's distance from the vessel through triangulation; the vessel operator could determine only that a marine mammal is some unknown distance from the vessel. In order to triangulate on the animal, a system similar to that used in the Gulf of Mexico Sperm Whale Seismic Study (SWSS) in May 2003 is necessary. That passive acoustical monitoring equipment is not the property of LDEO or the Ewing and is not available for the Yucatan cruises. LDEO is presently evaluating the scientific results of the passive sonar from the SWSS trip to determine whether it is practical to incorporate it into future seismic research cruises. NMFS expects a report on this analysis shortly.

Reporting

LDEO will submit a report to NMFS within 90 days after the end of the cruise, which is predicted to occur on or around April 4, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

ESA

Under section 7 of the ESA, the National Science Foundation(NSF), the agency funding LDEO, has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA. NSF has initiated consultation with the U.S. Fish and Wildlife Service on West Indian Manatees.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the northern Yucatan Peninsula surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey at the northern Yucatan Peninsula in the Gulf of Mexico will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited or nonexistent.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic surveys at the northern Yucatan Peninsula in the Gulf of Mexico, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: December 4, 2003.

Phil Williams,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–30922 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Secrecy and License To Export

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 17, 2004.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, (703) 308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; by e-mail at *susan.brown@uspto.gov;* or by facsimile at (703) 308–7407.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313–1450; by telephone (703) 308–5107; or by e-mail at *bob.spar@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries. When an invention is determined to be detrimental to national security, the Commissioner for Patents at the USPTO must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. If a secrecy order is applied to an international application, the application will not be forwarded to the

International Bureau as long as the secrecy order is in effect. The USPTO collects information to determine whether the patent laws and rules have been complied with, and to grant or revoke licenses to file abroad when appropriate. This collection of information is required by 35 U.S.C. 181–188 and administered through 37 CFR chapter 1, part 5, 5.1–5.33.

On November 29, 2001 OMB approved a Change Worksheet to adjust the burden estimates for this collection. The USPTO received more submissions than originally estimated; consequently, the responses increased by 332 and the total burden hours for this collection increased by 225 as an administrative adjustment.

In September 2003 the USPTO submitted an information collection package to OMB for review in support of a proposed rulemaking, ''Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan'' (RIN 0651–AB64). This proposed rulemaking would increase the filing fees for petitions related to foreign licenses in order to more accurately reflect the USPTO's actual cost of processing these petitions. An existing petition, the Petition for Changing the Scope of a License, was not previously covered in this collection as a separate item, but was added to this rulemaking package with its proposed filing fee.

There are no forms associated with this collection of information.

II. Method of Collection

By mail, facsimile, or hand carry when the applicant or agent files a patent application with the USPTO, submits subsequent papers during the prosecution of the application to the USPTO, or submits a request for a foreign filing license for a patent application to be filed abroad before the filing of a United States patent application.

III. Data

OMB Number: 0651–0034.

Form Number(s): N/A.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; business or other for profit; not-for-profit institutions; farms; Federal Government; and state, local or tribal Government.

Estimated Number of Respondents: 1,669 total responses per year. Of this total, 6 per year for petitions for rescission of secrecy order; 3 per year for petitions for permits to disclose or modification of secrecy order; 1 per year for general and group permits; 1,402 per year for petitions for foreign filing license without a corresponding application on file; 126 per year for petitions for foreign filing license with a corresponding United States application on file; 130 per year for petitions for retroactive license; and 1 per year for petitions for changing the scope of a license.

Estimated Time Per Response: The USPTO estimates that it will take approximately 3 hours for petitions for rescission of secrecy order; 2 hours petitions for permits to disclose or modification of secrecy order; 1 hour for general and group permits; 0.5 hours each for petitions for foreign filing licenses without a corresponding application and petitions for licenses with a corresponding U.S. patent application; 4 hours for petitions for retroactive licenses; and 1 hour for petitions for changing the scope of a license to gather, prepare and submit this information, depending upon the complexity of the situation.

Estimated Total Annual Respondent Burden Hours: 1,310 hours per year.

Estimated Total Annual Respondent Cost Burden: $374,660. Using the professional hourly rate of $286 for associate attorneys in private firms, the USPTO estimates $374,660 per year for salary costs associated with respondents.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Petition for rescission of secrecy order	3 hours	6	18
Petition for permit to disclose or modification of secrecy order	2 hours	3	6
Petition for general and group permits	1 hour	1	1
Petition for License; no corresponding application	0.5 hours	1,402	701
Petition for License; corresponding U.S. application	0.5 hours	126	63
Petition for retroactive license	4 hours	130	520
Petition for changing the scope of a license	1 hour	1	1
Totals		1,669	1,310

Estimated Total Annual Non-Hour Respondent Cost Burden: $215,732. There are no capital start-up or maintenance costs associated with this information collection. There are, however, filing fees and postage costs.

There is a proposed rulemaking information collection currently at OMB under review which, if approved, would add $437,000 in filing fees to this collection for the petitions for the licenses to export. However, since the information collection currently at OMB under review is a proposed rulemaking, the USPTO is using the current filing fee rate of $130 for this submission, for a total of $215,670 in filing fees for the licenses to export. No fees are associated with the secrecy order petitions.

Item	Responses (a)	Filing Fee ($) (b)	Total Filing Fee Cost Burden (c) (a × b)
Petition for rescission of secrecy order	6	0	0.00
Petition for permit to disclose or modification of secrecy order	3	0	0.00
Petition for general and group permits	1	0	0.00
Petition for License, no corresponding application	1,402	130.00	182,260.00
Petition for License, corresponding U.S. application	126	130.00	16,380.00

Item	Responses (a)	Filing Fee ($) (b)	Total Filing Fee Cost Burden (c) (a × b)
Petition for retroactive license	130	130.00	16,900.00
Petition for changing the scope of a license	1	130.00	130.00
Totals	1,669	.....	215,670.00

The USPTO estimates that 90 percent (90%) of the petitions in this collection are submitted to the USPTO by facsimile or hand carried because of the quick turnaround required. For the 10 percent (10%) of the public that chooses to submit the petitions in this collection to the USPTO by mail through the United States Postal Service, the USPTO estimates that the average first class postage cost for a mailed submission will be 37 cents. Therefore, the USPTO estimates that up to 167 submissions per year may be mailed to the USPTO at an average first class postage cost of 37 cents, for a total postage cost of $62.

The USPTO estimates that the total non-hour respondent cost burden for this collection in the form of postage costs and filing fees amounts to $215,732.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 9, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–30944 Filed 12–15–03; 8:45 am]

BILLING CODE 3510–16–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 January 15, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, 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 *Melanie_Kadlic@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: December 10, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Applications for New Grants under the Rehabilitation Services Administration (RSA).

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,000.

Burden Hours: 40,000.

Abstract: Vocational rehabilitation ''Federal Assistance'' Discretionary Grant Application Forms and Instructions for Rehabilitation Programs on behalf of Individuals with Disabilities are required so that all applications are completed in accordance with specific and unique program requirements.

This information 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 2418. 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 Sheila Carey at her e-mail address *Sheila.Carey@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. 03–30943 Filed 12–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Developing Hispanic-Serving Institutions (HSI) Program

ACTION: Notice reopening application deadline for certain applicants.

SUMMARY: The Secretary reopens for a limited purpose the deadline date for grant applications under the HSI Program Fiscal Year 2003 grant competition. The original deadline date was published in the **Federal Register** on January 29, 2003 (68 FR 4454). Some applicants submitted incorrect enrollment data on the Hispanic-Serving Institutions Assurance Form in their applications. As a result, the reported data indicated that Hispanic students comprised less than 25 percent of applicants' enrollment of undergraduate full-time equivalent students, less than 50 percent of the applicants' Hispanic students were low-income individuals, or both. We are reopening the deadline date to allow these applicants to resubmit their Hispanic-Serving Institutions Assurance Form with corrected enrollment data. This revised data should reflect the date that each applicant submitted its original application, not current data. In addition, each applicant must submit documentation to support any revised enrollment data. The documentation should be concise and easily verifiable. Application Deadline: December 29, 2003.

Transmittal of Applications: The resubmitted Hispanic-Serving Institutions Assurance Form and supporting documentation must be sent by hardcopy to: Mr. Carlos Reeder, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Your submittals must be postmarked no later than December 19, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7576 or via Internet: *darlene.collins@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 10, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–31009 Filed 12–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Thursday, January 8, 2004, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L211, Front Range Community College, 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO, 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Discussion and approval of recommendations and comments on modifications to the Building 371 Decommissioning Operations Plan (DOP)
2. Presentation and discussion on the 903 Pad Lip Area Interim Measure/Interim Remedial Action (IM/IRA)
3. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued in Washington, DC on December 11, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–30972 Filed 12–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Grant Exclusive or Partially Exclusive Patent License

AGENCY: National Energy Technology Laboratory (NETL), Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Notice is hereby given of an intent to grant to Powerspan Corporation at New Durham, New Hampshire, an exclusive or partially exclusive license to practice the invention described in the U.S. patent number 6,567,092 titled, ''Method for Removal of Mercury from Various Gas Streams.'' The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 15 days of publication of this notice the Technology Transfer Manager, Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880, receives in writing any of the following, together with the supporting documents: A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or, an application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than fifteen (15) days after the date of this published notice.

ADDRESSES: Diane Newlon, Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880.

FOR FURTHER INFORMATION CONTACT: Diane Newlon, Technology Transfer Manager, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 880, Morgantown, WV 26507–0880; Telephone (304) 285–4086; E-mail: *newlon@netl.doe.gov.*

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the DOE with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Powerspan Corporation, a small business located at New Durham, New Hampshire, has applied for an exclusive or partially exclusive license to practice the inventions and has a plan for commercialization of the invention.

The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 15-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued: December 1, 2003.

Rita A. Bajura,

Director, National Energy Technology Laboratory.

[FR Doc. 03–30971 Filed 12–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–32–000, et al.]

RWE Trading Americas Inc., et al.; Electric Rate and Corporate Filings

December 8, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. RWE Trading Americas Inc., UBS AG

[Docket No. EC04–32–00]

Take notice that on December 3, 2003, RWE Trading Americas Inc. (RWE Trading) and UBS AG (together, the Applicants) filed a joint application pursuant to section 203 of the Federal Power Act for disposition of all of the wholesale power sales contracts of RWE Trading to UBS AG. The Applicants further request confidential treatment of Exhibits H and I to the application pursuant to section 388.112 of the Commission's rules. The Applicants request that the Commission act on the application so that the transfer may be consummated before January 1, 2004.

Comment Date: December 23, 2003.

2. WFEC GENCO, L.L.C.

[Docket No. ER01–388–002]

Take notice that on December 1, 2003, WFEC GENCO, L.L.C. (GENCO) tendered for filing, (1) an updated market power analysis in compliance with the Commission's order authorizing GENCO to engage in wholesale sales of electric power at market-based rates; and (2) an amendment to its market-based rate tariff to adopt the Commission's new Market Behavior Rules.

Comment Date: December 22, 2003.

3. International Transmission Company, DTE Energy Company

[Docket Nos. ER01–3000–008; RT01–101–008; EC01–146–008]

Take notice that on December 2, 2003, International Transmission Company and DTE Energy Company tendered a filing in compliance with the November 17, 2003, Commission's Order, 105 FERC ¶ 61,209 (2003).

Comment Date: December 23, 2003.

4. Bank of America, N.A.

[Docket No. ER02–2536–001]

Take notice that on December 1, 2003, Bank of America, N.A. (Bank of America) tendered for filing First Revised Sheet No. 1 and Original Sheet Nos. 2–3 in compliance with FERC's Order Amending Market-Based Rate Tariffs and Authorizations, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (Nov. 17, 2003), and FERC's Order Conditionally Accepting Market-Based Rate Schedule, 101 FERC ¶ 61,098 (Oct. 30, 2002). These sheets contain the ''Market Behavior Rules'' amendment required by the November 17 Order.

Comment Date: December 22, 2003.

5. The Detroit Edison Company

[Docket No. ER03–19–003]

Take notice that on December 2, 2003, The Detroit Edison Company (Detroit Edison) tendered for filing a revised agency agreement between Midwest Independent System Operator, Inc., and Detroit Edison in compliance with Commission's Order, November 17, 2003, 105 FERC ¶ 61,209.

Comment Date: December 23, 2003.

6. MxEnergy Electric Inc.

[Docket No. ER04–170–001]

Take notice that on December 2, 2003, MxEnergy Electric Inc. submitted for filing a revised rate schedule, modifying

the rate schedule submitted on November 6, 2003 in Docket No. ER04–170–000.

Comment Date: December 23, 2003.

7. Citigroup Energy Inc.

[Docket No. ER042–08–001]

Take notice that on December 1, 2003, Citigroup Energy Inc. (CEI) submitted for filing a revised rate Schedule, FERC Volume 1, modifying the Market-based rate schedule submitted by CEI on November 19, 2003.

Comment Date: December 22, 2003.

8. AK Electric Supply LLC

[Docket No. ER04–213–001]

Take notice that on December 3, 2003, AK Electric Supply LLC (AK) filed a supplement to its application for market-based rates as power marketer. AK states that the supplement pertains to an amended and corrected Rate Schedule to comply with FERC Order 614.

Comment Date: December 24, 2003.

9. Xcel Energy Services Inc.

[Docket No. ER04–243–000]

Take notice that on December 1, 2003, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (PSC), submitted for filing a Notice of Cancellation of a Power Purchase Agreement between Public Service Company of Colorado and the City of Glenwood Springs.

XES requests that this Notice of Cancellation become effective as of the date of this filing.

Comment Date: December 22, 2003.

10. Central Vermont Public Service Corporation

[Docket No. ER04–244–000]

Take notice that on December 1, 2003, Central Vermont Public Service Corporation (CVPS) tendered for filing a letter stating that CVPS will not file a Forecast 2004 Cost Report as required under Paragraph Q–2 of Rate Schedule FERC No. 135 (RS–2 Rate Schedule) under which CVPS sells electric power to Connecticut Valley Electric Company Inc. (Customer), its wholly owned subsidiary. CVPS states that:

(1) The Customer is selling its assets and franchise to Public Service of New Hampshire; and (2) CVPS and the Customer are terminating the RS–2 Rate Schedule, all effective January 1, 2004. CVPS further states that since these transactions are highly likely to occur, no service under the RS–2 Rate Schedule will be provided or taken, and thus the filing of a cost report will serve no useful purpose.

CVPS states that copies of the filing were served upon the Customer, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment Date: December 22, 2003.

11. Central Vermont Public Service Corporation

[Docket No. ER04–245–000]

Take notice that on December 1, 2003, Central Vermont Public Service Corporation (CVPS) tendered for filing a letter stating that CVPS will not file a Forecast 2004 Cost Report for FERC Electric Tariff, Original Volume No. 3. CVPS states that no customers will take Tariff No. 3 transmission service during 2002 because such service was terminated effective December 31, 1999. CVPS provides transmission service under its FERC Electric Tariff, First Revised Volume No. 7.

CVPS states that copies of the filing were served upon the Vermont Public Service Board and the New Hampshire Public Utilities Commission.

Comment Date: December 22, 2003.

12. Central Vermont Public Service Corporation

[Docket No. ER04–246–000]

Take notice that on December 1, 2003, Central Vermont Public Service Corporation (CVPS) tendered for filing a letter stating that CVPS will not file a Forecast 2004 Cost Report for FERC Electric Tariff, Original Volume No. 4, since there are no customers expected to take such service.

CVPS states that a copy of the filing was served upon the Vermont Public Service Board.

Comment Date: December 22, 2003.

13. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–247–000]

Take notice that on December 1, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Attachment J (Timing Requirements) of the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, to implement changes in the timing requirements of Attachment J. The Midwest ISO has requested an effective date of January 30, 2004.

The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region and in addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO further states it will provide hard copies to any interested parties upon request.

Comment Date: December 22, 2003.

14. Michigan Electric Transmission Company, LLC

[Docket No. ER04–248–000]

Take notice that on December 2, 2003, Michigan Electric Transmission Company, LLC (METC) submitted proposed amendments to the following agreements: (1) ''Project I Transmission Ownership and Operating Agreement Between Consumers Power Company and Michigan South Central Power Agency,'' dated November 20, 1980; (2) ''Campbell Unit No. 3 Transmission Ownership and Operating Agreement Between Consumers Power Company and Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc.,'' dated August 15, 1980; (3) ''Campbell Unit No. 3 Transmission Ownership and Operating Agreement Between Consumers Power Company and Michigan Public Power Agency,'' dated October 1, 1979; (4) ''Belle River Transmission Ownership and Operating Agreement Between Consumers Power Company and Michigan Public Power Agency,'' dated December 1, 1982; and (5) ''Wolverine Transmission Ownership and Operating Agreement Between Consumers Power Company and Wolverine Power Supply Cooperative, Inc.,'' dated July 27, 1992 (collectively, the Customers and the Operating Agreements). METC states that the proposed amendments are intended to revise portions of the Operating Agreements to reflect certain changes necessary as a result of the acquisition of Consumers' transmission system by METC. METC requests an effective date of November 1, 2003, for the proposed amendments.

Comment Date: December 23, 2003.

15. Dominion Retail, Inc.

[Docket No. ER04–249–000]

Take notice that on December 2, 2003, Dominion Retail, Inc. (Dominion Retail), an indirect wholly owned subsidiary of Dominion Resources, Inc. an affiliate of Virginia Electric and Power Company, tendered for filing a rate schedule to engage in wholesale sales at market-based rates and a petition for waivers and blanket approvals under various regulations of the Commission. Dominion Retail states that it included in its filing a proposed code of conduct.

Comment Date: December 23, 2003.

16. California Independent System Operator Corporation

[Docket No. ER04–250–000]

Take notice that on December 2, 2003, the California Independent System Operator Corporation (ISO), tendered for filing a revised Participating Generator Agreement between the ISO and the California Department of Water Resources (CDWR) for acceptance by the Commission. The ISO states that the purpose of this revision is to conform Schedule 1 of the Participating Generator Agreement to the ISO's new format for specification of the technical characteristics of a Generating Unit, and to add certain units and remove certain units from this Schedule.

The ISO states that this filing has been served on CDWR, the California Public Utilities Commission, and all entities that are on the official service list for Docket No. ER99–3413.

The ISO is requesting a waiver of the 60-day prior notice requirement to allow the revised Schedule 1 to be made effective as of June 2, 2003, the date on which CDWR delivered to the ISO the request that the Schedule 1 be revised.

Comment Date: December 23, 2004.

17. California Independent System Operator Corporation

[Docket No. ER04–251–000]

Take notice that on December 2, 2003, the California Independent System Operator Corporation (ISO), tendered for filing a revised Participating Generator Agreement between the ISO and Northern California Power Agency (NCPA) for acceptance by the Commission. The ISO states that the purpose of this revision is to conform Schedule 1 of the Participating Generator Agreement to the ISO's new format for specification of the technical characteristics of a Generating Unit.

The ISO states that this filing has been served on NCPA, the California Public Utilities Commission, and all entities that are on the official service list for Docket No. ER00–2274.

The ISO is requesting a waiver of the 60-day prior notice requirement to allow the revised Schedule 1 to be made effective as of August 22, 2003, the date on which NCPA delivered to the ISO the request that the Schedule 1 be revised.

Comment Date: December 23, 2003.

18. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–252–000]

Take notice that on December 3, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR part 35, submitted for filing an Interconnection and Operating Agreement among Kentucky Utilities Company, the Midwest ISO, and Cannelton Hydroelectric Project, L.P.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: December 24, 2003.

19. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–253–000]

Take notice that on December 3, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12, submitted for filing an Interconnection and Operating Agreement between Wabash Valley Power Association, Inc. and the Midwest ISO.

Midwest ISO states that a copy of this filing was served on Wabash Valley Power Association, Inc.

Comment Date: December 23, 2003.

20. Ameren Services Company

[Docket No. ER04–254–000]

Take notice that on December 3, 2003, Ameren Services Company (ASC) tendered for filing a Service Agreement for Network Integration Transmission Service Agreement and an associated Network Operating Agreement between ASC and Edgar Electric Cooperative Association, d/b/a EnerStar Power Corp. ASC asserts that the purpose of the Agreements are to permit ASC to provide transmission service to Edgar Electric Cooperative Association, d/b/a EnerStar Power Corp. pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: December 23, 2003.

21. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–256–000]

Take notice that on December 4, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.12 of the Commission's regulations, 18 CFR 35.12, submitted for filing an Interconnection and Operating Agreement among Northern Iowa Windpower II, LLC, the Midwest ISO and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy Corporation.

Midwest ISO states that a copy of this filing was served on all parties.

Comment Date: December 26, 2003.

22. Southern California Edison Company

[Docket No. ER04–257–000]

Take notice, that on December 4, 2003, Southern California Edison Company (SCE) tendered for filing the Service Agreement for Wholesale Distribution Service (Service Agreement) between SCE and the City of Corona, California (Corona). The Service Agreement sets forth SCE's agreement to provide Distribution Service from the ISO Grid at Mira Loma Substation to a proposed new SCE-Corona 12 kV interconnection. SCE requests that the Service Agreement become effective on November 14, 2003.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, and Corona.

Comment Date: December 26, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (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. E3–00562 Filed 12–15–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7599–5]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plan for Transportation Conformity Purposes; Washington, DC Metropolitan Area (DC–MD–VA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the motor vehicle emission budgets (the budgets) for the Metropolitan Washington, DC One-Hour Ozone Nonattainment Area (the Washington, DC area) identified in the revised 2005 Attainment Demonstration Plan (attainment plan) and the 2005 Rate of Progress (ROP) plan are adequate for transportation conformity purposes. This attainment plan was submitted to EPA by the Commonwealth of Virginia, the State of Maryland and the District of Columbia as State Implementation Plan (SIP) revisions on August 19, 2003, September 2, 2003, and September 5, 2003, respectively. These SIP revision submittals included ROP plans for 2002 and 2005 which also identified motor vehicle emissions budgets. EPA has made findings of adequacy for the budgets of the attainment plan and the 2005 ROP plan for transportation conformity purposes. EPA has taken no action on the budgets identified in the 2002 ROP plan.

DATES: The findings that the budgets identified in the attainment plan and 2005 ROP plan are adequate were made in letters dated December 9, 2003 from EPA Region III to the three jurisdictions (DC-MD-VA). These adequacy findings are effective on December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–3335 or by e-mail at *kotsch.martin@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. The word ''budgets'' refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The word ''SIP'' in this document refers to the revised 2005 attainment plan for the Washington, DC area submitted to EPA as a SIP revision by the Commonwealth of Virginia, the State of Maryland and the District of Columbia on August 19, 2003, September 2, 2003 and September 5, 2003, respectively. These SIP revision submittals also included ROP plans for 2002 and 2005 which identified motor vehicle emissions budgets.

On March 2, 1999, the DC Circuit Court ruled that motor vehicle emission budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate.

The Commonwealth of Virginia, the State of Maryland and the District of Columbia formally submitted identical SIP revisions to EPA on August 19, 2003, September 2, 2003 and September 5, 2003, respectively, consisting of a revised 2005 attainment plan and initial 2002 and 2005 Rate ROP plans for the Washington, DC area. On September 10, 2003, we posted the availability of the plans and their identified budgets on our conformity Web site for the purpose of soliciting public comment on the adequacy of the budgets. EPA's public comment period closed on October 10, 2003. We received comments from the Sierra Club.

On December 9, 2003, EPA Region III sent a letter to each of the three jurisdictions (DC–MD–VA) that constituted final Agency action on the adequacy of the motor vehicle emission budgets contained in the revised attainment plan and in the 2005 ROP plan. That action was EPA's finding that the budgets identified in the revised attainment plan and 2005 ROP plan for the Washington, DC area are adequate for transportation conformity purposes. As a result of our December 9, 2003 findings, the budgets contained in the revised 2005 attainment plan and the 2005 ROP plan for the Washington, DC area may be used for future conformity determinations. The 2002 ROP plan submitted as part of the SIP revision by the three jurisdictions showed a shortfall in the level of VOC emissions reductions required to demonstrate ROP. EPA has taken no action with regard to the adequacy of the budgets identified in the 2002 ROP plan because we understand that the states are revising that 2002 ROP plan to reflect that there is, in fact, no VOC shortfall for the 2002 milestone year. EPA has, therefore, made findings of adequacy only for the budgets identified in the revised attainment plan and the budgets identified in the 2005 ROP plan. These budgets will be needed for conformity and transportation planning.

This is an announcement of adequacy findings that we made on December 9, 2003. The effective date of these findings is December 31, 2003. These findings will also be announced on EPA's Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the ''Conformity'' button). The Web site will contain a detailed analysis of our adequacy findings.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118 (e)(4) through (5).

Please note that these adequacy findings for the budgets identified in the revised attainment plan and 2005 ROP plan are separate from EPA's completeness determination of the revised SIP submission, and separate from EPA's action to approve or disapprove the revised SIP. Even though we have found the motor vehicle emission budgets of the Washington, DC area's revised 2005 attainment plan and 2005 ROP plan adequate, and they are replacing the previously approved budgets, those motor vehicle emission budgets contained in the revised attainment plan and 2005 ROP plan still have to be approved or disapproved.

Dated: December 9, 2003.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–31005 Filed 12–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7599–4]

Notice of the Availability of the Final Document for the U.S.-Mexico Border 2012 Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency announces the availability of the ''Border 2012: U.S.-Mexico Environmental Program'' Framework Document (Border Plan or Border 2012). Border 2012 is a 10-year, binational, results-oriented, environmental program for the U.S.-Mexico border region, which has been developed by EPA, Secretaría del Medio Ambiente y Recursos Naturales (SEMARNAT, Mexico's Secretariat of Environment and Natural Resources),

the U.S. Department of Health and Human Services, Secretaría de Salud (Mexico's Secretariat of Health), the U.S. border Tribes, and the environmental agencies from each of the ten U.S.-Mexico border States. The mission of Border 2012 is to protect public health and the environment in the U.S.-Mexico border region, in a manner consistent with the principles of sustainable development. The Border 2012 Program is the latest multi-year, binational planning effort to be implemented under the La Paz Agreement and succeeds Border XXI, a five-year program that ended in 2000.

The proposed Border 2012 Program was announced in Mexico and in the U.S. **Federal Register** in September 2002. The announcement was followed by a 60-day public comment period which included binational and domestic meetings in 27 border cities. EPA and SEMARNAT also requested input from interested parties through additional meetings, written correspondence, and internet exchanges. During the comment period, over 1,000 individual comments were received. The Border 2012 Framework was then altered to reflect many of the comments and recommendations; the new framework contains more detailed goals and objectives and a focus on environmental education and training. In addition, based on public comments, the Border 2012 Operational Guidance was created to assist partners, stakeholders, and the general public to understand how the program is implemented. The Border 2012 Framework Document, the Response Summary Report, and the Operational Guidance can be found online at *http://www.epa.gov.usmexicoborder.*

SUPPLEMENTARY INFORMATION:

I. Background

The proposed Border 2012 emphasizes a bottom-up approach, anticipating that local decision-making, priority-setting and project implementation will best address environmental issues in the border region. The new Border 2012 Program builds upon the successes achieved under Border XXI while also establishing a regionally-focused border plan to facilitate environmental priority setting and planning at the regional and local levels. Border 2012 will emphasize concrete measurable results, public participation, transparency, and timely access to environmental information.

II. Coordinating Bodies

Border 2012 is organized around coordinating bodies. These coordinating bodies include National Coordinators, four Regional (geographically-focused) Workgroups, three Border-wide Workgroups, and three Policy Forums.

A. National Coordinators

Consistent with the requirements of the La Paz Agreement, the National Coordinators will monitor and manage implementation of the Border 2012 Program and ensure cooperation and communication among all coordinating bodies.

B. Regional Workgroups

Providing the foundation of the Border 2012 Program, four multi-media, regionally focused workgroups will support the efforts of local Task Forces and coordinate activities at the regional and local level. The Regional Workgroups are the following: California-Baja California, Arizona-Sonora, New Mexico-Texas-Chihuahua, and Texas-Coahuila-Nuevo Leon-Tamaulipas.

C. Border-wide Workgroups

Border-wide Workgroups will concentrate on issues that are multi-regional and primarily federal in nature. Three Border-wide Workgroups will have federal U.S. and Mexican co-chairs for the following issues: environmental health, emergency preparedness and response, and cooperative enforcement and compliance.

D. Policy Forums

Policy Forums will have a media-specific focus and will concentrate on broad policy issues that require an on-going dialogue between the U.S. and Mexico in the following areas: air; water; hazardous waste, solid waste, and toxic substances.

Border 2012 Coordinating Bodies will be broad-based and will include representation from local communities from both sides of the border, including non-governmental or community-based organizations; academic institutions; local, state, and U.S. tribal representatives; and binational organizations.

III. Goals and Objectives

Border 2012 establishes the following six border-wide environmental goals for the U.S.-Mexico border region: reduce water contamination; reduce air pollution; reduce land contamination; improve environmental health; reduce exposure to chemicals as a result of accidental chemical release and/or acts of terrorism; and improve environmental performance through compliance, enforcement, pollution prevention, and promotion of environmental stewardship.

For further information on Border 2012, please contact: EPA El Paso Border Office at 915–533–7273 or 800–334–0741 or EPA San Diego Border Office at 619–235–4765 or 800–334–0741. Hard copies of the Border 2012 Framework document can be obtained by calling 1–800–490–9198 or accessing *http://www.epa.gov/ncepihom* on the Internet and requesting public document #160R03001.

Dated: December 10, 2003.

Joan Fidler,

Director Office of Western Hemisphere and Bilateral Affairs, Office of International Affairs.

[FR Doc. 03–31006 Filed 12–15–03; 8:45 am]

BILLING CODE 6560–58–P

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act Task Force

AGENCY: Council on Evironmental Policy.

ACTION: Notice of public meeting.

SUMMARY: The Rocky Mountain Regional NEPA Roundtable will be held on January 8 and 9, 2004. The Council on Environmental Quality (CEQ) established a National Environmental Policy Act (NEPA) Task Force to review the current NEPA implementing practices and procedures in the following areas: Technology and information management; Federal and intergovernmental collaboration; programmatic analyses and subsequent tiered documents; and adaptive management and monitoring. In addition, the NEPA Task Force reviewed other NEPA implementation issues such as the level of detail included in agencies' procedures and documentation for promulgating categorical exclusions; the structure and documentation of environmental assessments; and other implementation practices that would benefit Federal agencies.

''The Task Force Report to the Council on Environmental Quality—Modernizing NEPA Implementation'' was published and presented to CEQ on September 24, 2003. The Report contains recommendations designed to improve federal agency decision making by modernizing the NEPA process. To further the work of the NEPA Task Force, CEQ is holding a series of regional public roundtables to raise public awareness of the NEPA Task Force draft recommendations and

discuss the recommendations and their implementation. The Rocky Mountain Regional NEPA Roundtable will be held at the Copper Mountain Conference Center, Copper Mountain, Colorado. Information about the location is at *http://www.whitehouse.gov/ceg* or the NEPA Tak Force Web site at *http://www.coppercolorado.com/meetings/site/virtual_tours* The Rocky Mountain NEPA Roundtable is co-hosted by the Greater Yellowstone Coalition and the National Ski Area Assoction. Representatives from important constituent groups that have worked on NEPA issues have been invited to participate in a discussion of the recommendations.

DATES: The Rocky Mountain regional public roundtable will be held on January 8 and 9, 2004. The January 8 session will begin at 9 a.m. and interested members of the public will have an opportunity to present their views at 3:30 p.m. following the roundtable discussion. That session will end in the evening after public views have been presented. The session on January 9 will begin at 9 a.m. and interested members of the public will have and oportunity to present their views at 11 a.m. following the roundtable discussion.

ADDRESSES: Interested parties can review the Task Force report via the CEQ Web site at *http://www.whitehouse.gov/ceq/* or the NEPA Task Force Web site at *http:ceq.eh.doe.gov/ntf/.* If you would like a printed copy, please mail a request to The NEPA Task Force, 722 Jackson Place, NW., Washington, DC 20585, or contact Bill Perhach at (202) 395–0826 to request a copy.

Dated: December 10, 2003.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 03–30946 Filed 12–15–03; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 03–241; DA 03–3783]

In the Matter of Roger Thomas Scaggs Advanced Class Amateur Radio Operator and Licensee of Amateur Radio Station W5EBC

AGENCY: Federal Communications Commission.

ACTION: Notice; Order to show cause.

SUMMARY: This document is an order in which the Enforcement Bureau of the Federal Communications Commission requests a hearing proceeding before a Commission administrative law judge to determine whether Roger Thomas Scaggs, the licensee of W5EBC Amateur Radio Station and Advanced Class Operator license, is qualified to remain a Commission licensee in light of his 1998 felony conviction for murder and whether his authorization should be revoked.

DATES: Effective December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Oshinsky, (202) 418–7167 or e-mail *goshinsky@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Order to Show Cause regarding Roger Thomas Scaggs,* EB Docket No. 03–241, DA 03–3738, released November 21, 2003. The complete text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. In addition, the complete text may be retrieved from the FCC's Web site at *http://www.fcc.gov.* The *Order to Show Cause regarding Roger Thomas Scaggs* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

A. Background

1. Approximately six months after the Commission granted Mr. Scaggs' subject amateur radio license, on November 16, 1998, he was convicted for the March 6, 1996, murder of Penny Scaggs, his wife of thirty-five years. The record in that case showed that Mr. Scaggs beat to death his wife with a galvanized lead pipe and then stabbed her several times in their home. Mr. Scaggs was convicted and sentenced by the jury to a prison term of thirty-two (32) years, and he was fined Ten Thousand Dollars ($10,000.00). His conviction was affirmed and his request for rehearing overruled on June 22, 2000.

B. Discussion

2. Accordingly, section 312(a) (2) of the Communications Act of 1934, as amended (the ''Act''), provides that the Commission may revoke any license on the basis of ''conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on the original application.'' Among the factors that the Commission considers in its review of applications to determine whether the applicant has the requisite qualifications to operate the station for which authority is sought is the character of the applicant. Before revoking a license, the Commission must serve the licensee with an order to show cause why revocation should not issue and must provide the licensee with an opportunity for hearing.

3. In assessing character qualifications in broadcast licensing matters, the Commission considers, as relevant, ''evidence of any conviction for misconduct constituting a felony.'' The Commission believes that ''[b]ecause all felonies are serious crimes, any conviction provides an indication of an applicant's or licensee's propensity to obey the law'' and to conform to provisions of both the Act and the agency's rules and policies. The Commission has consistently applied these broadcast character standards to applicants and licensees in the Amateur Radio Service. Thus, very serious felonies raise potential questions regarding an amateur licensee's qualifications.

4. Here, Mr. Scaggs' murder conviction raises very serious questions as to whether he possesses the requisite character qualifications to be and to remain a Commission licensee and whether his captioned license should be revoked. For this reason, we are designating the matter for hearing before a Commission administrative law judge.

C. Ordering Clauses

5. Pursuant to sections 312(a) and (c) of the Act, and authority delegated pursuant to §§ 0.111, 0.311, and 1.91(a) of the Commission's rules, Roger Thomas Scaggs is hereby Ordered to Show Cause why his authorization for Amateur Radio Advanced Class License W5EBC should not be revoked. Roger Thomas Scaggs shall appear before an administrative law judge at a time and place to be specified in a subsequent order and provide evidence upon the following issues:

i. To determine the effect of Roger Thomas Scaggs' felony conviction on his qualifications to be and to remain a Commission licensee; and

ii. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Roger Thomas Scaggs is qualified to be and to remain a Commission licensee and whether his Amateur Radio Advanced Class License W5EBC should be revoked.

6. Pursuant to section 312(c) of the Act and 1.91(c) of the Commission's rules, to avail himself of the opportunity to be heard and the right to present evidence in the hearing in this proceeding, Roger Thomas Scaggs, in

person or by his attorney, shall file with the Commission, within thirty (30) days of the release of this Order to Show Cause, a written appearance stating that he will appear on the date fixed for hearing and present evidence on the issues specified herein.

7. Pursuant to 1.92(c) of the Commission's rules, if Roger Thomas Scaggs fails to timely file a written appearance within the thirty (30)-day period, or has not filed a petition to accept, for good cause shown, a written appearance beyond the expiration of the thirty (30)-day period, the right to a hearing shall be deemed to be waived. Where a hearing is waived, the presiding administrative law judge shall, at the earliest practicable date, issue an order terminating the hearing proceeding and certifying the case to the Commission.

8. Pursuant to section 312(d) of the Act and § 1.91(d) of the Commission's rules, the burden of proceeding with the introduction of evidence and the burden of proof with respect to both of the issues specified above shall be on the Enforcement Bureau.

9. The *Order to Show Cause regarding Roger Thomas Scaggs,* be sent, by Certified Mail, Return Receipt Requested, to Roger Thomas Scaggs, RR 2 Box 4400, Gatesville, Texas 76597, and to his counsel, Charles R. Burton, Esq., Minton, Burton, Foster & Collins, 1100 Guadalupe Street, Austin, Texas 78701.

10. The Secretary of the Commission shall cause to have this *Order to Show Cause regarding Roger Thomas Scaggs* or a summary thereof published in the **Federal Register**.

Federal Communications Commission.

David Solomon,

Chief, Enforcement Bureau.

[FR Doc. 03–31022 Filed 12–15–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Meeting; Sunshine Act

DATE & TIME: Thursday, December 18, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

The following item has been added to the agenda: Enforcement Treasurer Policy—Official and Personal Capacities.

FOR FURTHER INFORMATION CONTACT: Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–31156 Filed 12–12–03; 3:09 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 30, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Barry M. Snyder and Lindrew Properties, LLC, Buffalo, New York; to acquire additional voting shares of Great Lakes Bancorp, Inc., Buffalo, New York, and indirectly acquire additional voting shares of Greater Buffalo Savings Bank, Buffalo, New York.

Board of Governors of the Federal Reserve System, December 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–30952 Filed 12–15–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Southern Financial Bancorp., Inc., Warrenton, Virginia; to acquire 100 percent of the voting shares of Essex Bancorp, Inc., Norfolk, Virginia, and thereby indirectly acquire Essex Savings Bank, F.S.B., Norfolk, Virginia, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments on this application must be received by January 9, 2004.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. City Bancorp, Springfield, Missouri; to engage *de novo* in extending credit and servicing activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–30951 Filed 12–15–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Blood Safety and Availability will meet to examine the role of the Federal Government in the distribution of the nation's blood supply. The meeting will be entirely open to the public.

DATES: The Advisory Committee on Blood Safety and Availability will meet on Wednesday, January 28 and Thursday, January 29, 2004 from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the Grand Hyatt Washington Hotel, 1000 H Street NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: CAPT Lawrence C. McMurtry, Deputy Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852, (301) 443–2331, FAX (301) 443–4788, e-mail *lmcmurtry@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Public comment will be solicited at the meeting. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business January 16, 2004. Those who wish to utilize electronic data projection in their presentation to the Committee must submit their material to the Executive Secretary prior to close of business January 16, 2004. In addition, anyone planning to comment is encouraged to contact the Executive Secretary at her/his earliest convenience.

Dated: December 10, 2003.

CAPT Lawrence C. McMurtry,

Deputy Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 03–30966 Filed 12–15–03; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Extension of Comment Period

AGENCY: Health and Human Services, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) is extending the period for comments on revised Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons through January 6, 2004. This revised guidance was issued pursuant to Executive Order 13166.

DATES: The deadline for comments is extended to January 6, 2004.

ADDRESSES: Comments should be addressed to Deeana Jang with ''Attention: LEP Comments,'' and should be sent to 200 Independence Avenue, SW., Room 506F, Washington, DC 20201. Comments may also be submitted by e-mail at *LEP.comments@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Deeana Jang, 202–619–1795.

SUPPLEMENTARY INFORMATION: In the notice document 03–20179 beginning on page 47311 in the issue of Friday, August 8, 2003, HHS announced an extended 120 day comment period, ''to encourage comment from the public and from recipients regarding experience in applying the revised guidance.'' However, that notice incorrectly identified January 6, 2004, as the end of the comment period. This was corrected in notice document C3–20179 on page 49843 in the issue of Tuesday, August 19, 2003, which identified the correct date as December 8, 2003. In comments received by the Department by December 8, concerns were raised that confusion about the close of the 120 day comment period may inadvertantly foreclose consideration of submissions made by commenters relying on the January 6, 2004 date. To avoid any such confusion, the Department will hold open the comment period through January 6, 2004, for comments received by the Department through that date.

Dated: December 9, 2003.

Richard M. Campanelli,

Director, Office for Civil Rights.

[FR Doc. 03–30967 Filed 12–15–03; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''National Children's Study Pilot: Primary Care Practice-Based Research Networks (PBRNs).'' In accordance with the Paperwork Reduction Act of 1995, Public Law 1004–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by February 17, 2004.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5022, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

National Children's Study pilot project to determine feasibility of NCS data collection in Primary Care Practices.''

The project is being conducted in response to a modification of an AHRQ RFP entitled ''Recourse Center for Primary Care Practice-Based Research Networks (PBRNs)'' (issued under Contract 290–02–0008). In January 2003 AHRQ requested that the PBRN Resource Center assess the potential for PBRNs to participate in the National Children's Study (NCS).

In 2000, Congress passed the Children's Health Act, authorizing an unprecedented study of the impact of the environment on children's health.

The goal of the NCS is to identify sufficient numbers of women of childbearing age to enroll 100,000 pregnant women into the NCS early in gestation, and then to enroll and follow their children through 21 years of age.

A key design issue for the NCS is the manner in which participants will be recruited and enrolled into the study. Previous research states that a well-established relationship between the researcher and the subject, convenient study location and active community ties bolster recruitment success and the likelihood of a parent to enroll their child in longitudinal studies. PBRNs

consist mainly of non-academic, community-based primary care practices with well-established relationships with their subject population. PBRNs therefore offer a potentially valuable resource for identifying, enrolling, and following women and children for the NCS.

Recognizing this, AHRQ requested that the Resource Center participate in the design of a pilot study of PBRNs' ability to participate in the NCS. The proposed NCS pilot study will test the ability of PBRNs to collect, process, and manage data similar to that which is expected to be collected and processed in the NCS. This pilot study will allow the Resource Center to determine the factors that enable or hinder the collection of such data at primary care practices, as well as make an overall determination of the feasibility of PBRN practices' participation in the NCS.

The pilot study will involve use of in-person interviews, developmental assessments of children, self-administered parent/guardian questionnaires, and physical exams including the collection of urine. The pilot study will evaluate the feasibility of having PBRNs participate in the NCS using several indicators:

The ability of practices to use self-administered questionnaires to collect and manage the medical and dietary history data of pregnant women and of children ages 1 and 5;

The ability of practices to effectively collect and manage data from a physical examination of study subjects (including health status and urine collection);

The ability of practices to facilitate a developmental assessment of children conducted at age one and age five;

The amount of burden data collection places on practices;

The characteristics of successful and unsuccessful practices in the study;

The ease of data collection across different patient populations and data collection modes and;

To make the necessary determinations, assessments and surveys will be conducted with PBRN practice patients as well as with a small number of patients who ordinarily receive care elsewhere, and PBRN staff will also be surveyed.

Methods of Collection

The data will be collected from 36 practices per respondent category, meaning 36 practices will collect data on pregnant women, 36 practices will collect data on children aged 1 and 5. It is expected that some practices will collect data on more than one respondent group. Each practice will recruit 14 patients per respondent group using convenience sampling procedures. A total of 504 pregnant women and 504 children and their parents (half will be 1 year old and half will be 5 years old) will be involved in the data collection. Because a small proportion (20%) of patients will be asked to visit another practice participating in the pilot study in order to test the ability of practices to collect and manage data on non-member patients, the NCS will require some providers to collect data on some patients they do not normally care for.

The method of data collection for the patient assessment includes self-administered questionnaires, physical examination, and collection of a urine sample. The practice will contact potential participants through a mailing and a phone call. Non-respondents will not be contacted again.

Estimated Annual Respondent Burden

Data collection	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Average hourly wage rate	Labor rates
Pregnant woman: Data collected at their current practice	403	2.5	1007.5	17.18*	$17,308.85
Pregnant woman: Data collected at a practice other than usual source of care	101	3	303	17.18*	5,205.54
Parent of a 1 year old or 5 year old: Data collected at their current practice	403	4	1,612	17.18*	27,694.16
Parent of a 1 year old or 5 year old: Data collected at a practice other than usual source of care	101	4.5	454.5	17.18*	7,808.31
1 year old or 5 year old: Data collected at their usual practice	403	4	1,612	0	0.00
1 year old or 5 year old: Data collected at their usual practice	101	4.5	454.5	0	0.00
Total	1512	3.6	5443.50	.....	$58,016.86

*Based on the average hourly wage across private and public sector jobs in the United States, National Compensation Survey, July 2002. U.S. Bureau of Labor Statistics.

Estimated Costs to the Federal Government

The total cost to the government for activities directly related to this data collection is estimated to be $780,411.

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: December 10, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–31023 Filed 12–12–03; 10:46 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Research on Prevention of Lyme Disease in Humans in the United States, Program Announcement 04008

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Research on Prevention of Lyme Disease in Humans in the United States, Program Announcement 04008.

Times and Dates: 9 a.m.–9:30 a.m., January 15, 2004 (Open); 9:30 a.m.–4 p.m., January 15, 2004 (Closed).

Place: Atlanta Airport Marriott, 4711 Best Road, Atlanta, GA 30337, Telephone (404) 766–7900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 04008.

For Further Information Contact: Nora L. Keenan, Ph.D., Scientific Review Administrator, Office of Extramural Research, National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., MS–C19, Atlanta, GA 30333, Telephone (404) 639–2176.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 3, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–30954 Filed 12–15–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Data Coordinating Center for Autism and Other Developmental Disabilities Surveillance and Epidemiological Research Program Announcement 04014

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Data Coordinating Center for Autism and Other Developmental Disabilities Surveillance and Epidemiological Research Program Announcement 04014.

Times and Dates: 8:45 a.m.–9:35 a.m., January 11, 2004 (Open); 10 a.m.–4:30 p.m., January 11, 2004 (Closed).

Place: Atlanta Airport Marriott, 4711 Best Road, College Park, GA 30337, Telephone (404) 766–7900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 04014.

For Further Information Contact: John F. Hough, Dr.PH., National Institutes of Health/NIAAA 6000 Executive Boulevard, Willco Building, Bethesda, MD 20892, (301) 402–9371.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 4, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–30955 Filed 12–15–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Research on the Laboratory Diagnosis, Immunology and Pathogenesis of Lyme Disease in the United States, Program Announcement 04006

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Cooperative Agreement for Research on the Laboratory Diagnosis, Immunology, and Pathogenesis of Lyme Disease in the United States, Program Announcement 04006.

Times and Dates: 8:30 a.m.–9 a.m., January 14, 2004 (Open); 9 a.m.–6 p.m., January 14, 2004 (Closed).

Place: Atlanta Airport Marriott, 4711 Best Road, Atlanta, GA 30337, Telephone (404) 766–7900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 04006.

For Further Information Contact: Nora L. Keenan, Ph.D., Scientific Review Administrator, Office of Extramural Research, National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE, MS–C19, Atlanta, GA 30333, Telephone (404) 639–2176.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 3, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–30956 Filed 12–15–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000N–1652]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 3, 2002 (67 FR 22367), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0530. The approval expires on November 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: December 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30962 Filed 12–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0142]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 23, 2003 (68 FR 43532), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0445. The approval expires on November 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: December 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30963 Filed 12–15–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0542]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Notification Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for premarket notification (510(k)) submissions.

DATES: Submit written and electronic comments on the collection of information by February 17, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance

of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Notification 510(k) Submissions—21 CFR Part 807 (OMB Control Number 0910–0120)—Extension

Section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(k)) requires a person who intends to market a medical device to submit a 510(k) submission to FDA at least 90 days before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use. The definition of ''person'' has been expanded to include hospitals who re-use or re-manufacture single-use medical devices. The Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250), added section 510(o) to the act to establish new regulatory requirements for reprocessed single-use devices (SUDs) (MDUFMA section 302(b), the act section 510(o)). MDUFMA was signed into law on October 26, 2002. Section 301(b) of MDUFMA adds new requirements for reprocessed SUDs to section 510 of the act. The estimated submissions below include those submitted by hospitals re-manufacturing single-use medical devices.

Section 510(k) of the act allows for exemptions to the 510(k) submissions, i.e., a 510(k) submission would not be required if FDA determines that premarket notification is not necessary for the protection of the public health, and they are specifically exempted through the regulatory process. Under 21 CFR 807.85 ''Exemption from premarket notification,'' a device is exempt from premarket notification if the device intended for introduction into commercial distribution is not generally available in finished form for purchase and is not offered through labeling and advertising by the manufacturer, importer, or distributor for commercial distribution. In addition, the device must meet one of the following conditions: (1) It is intended for use by a patient or dentist (or other specially qualified persons), or (2) it is intended solely for use by a physician or dentist and is not generally available to other physicians or dentists.

A commercial distributor who places a device into commercial distribution for the first time under their own name and a repackager who places their own name on a device and does not change any other labeling or otherwise affect the device, shall be exempted from premarket notification if the device was legally in commercial distribution before May 28, 1976, or a premarket notification was submitted by another person.

One of MDUFMA's provisions requires the submission of validation data specified in the statute for certain reprocessed SUDs (as identified by FDA) such as cleaning and sterilization data, and functional performance data. FDA offers a guidance document to assist reprocessors of single use devices in submitting MDUFMA mandated validation data for the devices.

MDUFMA requires that FDA review the types of reprocessed SUDs not subject to premarket notification requirements and identify which of these devices require the submission of validation data to ensure their substantial equivalence to predicate devices. MDUFMA also requires that FDA review critical and semi-critical reprocessed SUDs that are currently exempt from premarket notification requirements and determine which of these devices require the submissions of 510(k)s to ensure their substantial equivalence to predicate devices. Under MDUFMA, FDA will use the validation data submitted for a reprocessed SUD to determine whether the device will remain substantially equivalent in terms of safety and effectiveness to its predicate after the maximum number of times the device is reprocessed as intended by the person submitting the premarket notification.

The information collected in a premarket notification is used by the medical, scientific, and engineering staffs of FDA in making determinations as to whether or not devices can be allowed to enter the U.S. market. The premarket notification review process allows for scientific and/or medical review of devices, subject to section 510(k) of the act, to confirm that the new devices are as safe and as effective as legally marketed predicate devices. This review process, therefore, prevents potentially unsafe and/or ineffective devices, including those with fraudulent claims, from entering the U.S. market. This information will allow FDA to collect data to ensure that the use of the device will not present an unreasonable risk for the subject's rights. The respondents to this information collection will primarily be medical device manufacturers and businesses.

FDA Form 3514 was developed to assist respondents in categorizing 510(k) data for submission to FDA. This form also assists respondents in organizing and submitting data for other FDA medical device programs such as premarket approval applications, investigational device exemptions, and humanitarian device exemptions.

FDA estimates the burden of this collection of information to be as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Part 807, Subpart E (807.81 and 807.87 (510(k)))		4,000	1	4,000	80	320,000
	FDA 3514	2,000	1	2,000	.5	1,000
Submission of validation data (2003)		20	5	100	40	28,000
Totals						349,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
807.93	2,000	10	20,000	0.5	10,000
Totals					10,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on conversations with industry and trade association representatives, and from internal review of the documents listed in tables 1 and 2 of this document.

The total burden for using voluntary FDA Form 3514 is estimated to be approximately 1,000 hours and has been included in this collection of information. Once this collection of information has been approved, the burden for FDA Form 3514 will be reported and approved in each of the following OMB information collections: (1) Investigational device exemption reports and records (OMB control number 0910–0078), (2) premarket approval of medical devices (OMB control number 0910–0231), and (3) medical devices, humanitarian devices (OMB control number 0910–0332).

Dated: December 9, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30964 Filed 12–15–03; 8:45 am]

BILLING CODE 4160–01–S

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 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 Cancer Institute Special Emphasis Panel; Preparation of Radiolabeled Materials.

Date: December 19, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: C. Michael Kerwin, Ph.D., MPH Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329, 301–496–7421, *kerwinm@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.

(Catalogue of Federal Domestic Assistant 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: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30981 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

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 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G—Education.

Date: February 9–11, 2004.

Time: 8 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Ilda M. McKenna, Scientific Review Administrator, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard Room 8111, Bethesda, MD 20892, 301–496–7481, *mckennai@mail.nih.gov.*

(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: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30982 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health 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 Environmental Health Sciences Special Emphasis Panel, Research Program Projects.

Date: February 3–4, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

*Contact Person:*Sally Eckert-Tilotta, Ph.D., National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30973 Filed 12–15–03; 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, Biodefense Proteomics Research Programs: Identifying Targets for Therapeutic Interventions Using Proteomic Technology.

Date: January 7–9, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gerald L. McLaughlin, Ph.D., Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2212, Bethesda, MD 20892–7616, (301) 436–7465, *gm145a@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: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30975 Filed 12–15–03; 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; Innate Immune Receptors and Adjuvant Discovery.

Date: January 23, 2004.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Paul A. Amstad, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 402–7098, *pamstad@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: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30983 Filed 12–15–03; 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, December 19, 2003, 1 p.m. to December 19, 2003, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on November 26, 2003, 68 FR 66471–66472.

The meeting will be held December 18, 2003. The time and location remain the same. The meeting is closed to the public.

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30974 Filed 12–15–03; 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, Geriatrics.

Date: December 12, 2003.
Time: 12:00 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Charles G. Hollingsworth, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5179, MSC 7840, Bethesda, MD 20892, 301–435–2406, *hollinc@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, Microbial Immunology.
Date: December 15, 2003.
Time: 11:00 am to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contfact Person: Tina McIntyre, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@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, Folates.
Date: December 15, 2003.
Time: 1:30 pm to 3:30 pm.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Marcia Litwack, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, 301–435–1719.
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, Down Syndrome: Development of Dementia.
Date: December 15, 2003.
Time: 1:30 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Karen Sirocco, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@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, Technology of Antibody Production.
Date: December 15, 2003.
Time: 4 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Tina McIntyre, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@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, DNA Microarrays ZRG1 MDCN–A 03.
Date: December 17, 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: Carole L Jelsema, Ph.D., Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@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, SARS Vaccines R21 Applications.
Date: December 18, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Hotel Embassy Row, 2015 Massachusetts Avenue, Washington, DC 20036.
Contact Person: Mary Clare Walker, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@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, Speech, Language and Memory Processes.
Date: December 18, 2003.
Time: 2 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: Dana Plude, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@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, Morphogenesis & Regeneration Technology ZRG1 MDCN–A 02.
Date: December 22, 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: Carole L. Jelsema, Ph.D., Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@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, R21 Stem Cells & Neurotechnology ZRG1 MDCN–A 04.
Date: December 30, 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: Carole L. Jelsema, Ph.D., Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Physiology & Neurotechnology ZRG1 MDCN–A 06.
Date: January 6, 2004.
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: Carole L. Jelsema, Ph.D., Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30976 Filed 12–15–03; 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, December 11, 2003, 2 p.m. to December 11, 2003, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 3, 2003, 68 FR 67690–67691.

The meeting will be held December 17, 2003, from 1 p.m. to 2 p.m. The location remains the same. The meeting is closed to the public.

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30977 Filed 12–15–03; 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, December 10, 2003, 2 p.m. to December 10, 2003, 3 p.m., National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 3, 2003, 68 FR 67690–67691.

The meeting will be held December 17, 2003. The time and location remains the same. The meeting is closed to the public.

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30978 Filed 12–15–03; 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, December 9, 2003, 12 p.m., to December 9, 2003, 1 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on December 8, 2003, 68 FR 68404–68405.

The meeting will be held December 12, 2003, from 10 a.m. to 11 a.m. The location remains the same. The meeting is closed to the public.

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30979 Filed 12–15–03; 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 Review Special Emphasis Panel, December 19, 2003, 3 p.m. to December 19, 2003, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on November 26, 2003, 68 FR 66471–66472.

The meeting will be held December 16, 2003, from 1 p.m. to 3 p.m. The location remains the same. The meeting is closed to the public.

Dated: December 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–30980 Filed 12–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Community Mental Health Services Block Grant Application Guidance and Instructions, FY 2005—2007 (OMB No. 0930–0168, Revision)—Sections 1911 through 1920 of the Public Health Service Act (42 U.S.C. 300x through 300x–9) provide for annual allotments to assist States to establish or expand an organized, community-based system of care for adults with serious mental illness and children with serious emotional disturbances. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary of the Department of Health and Human Services.

For the Federal fiscal years 2005—2007 Community Mental Health Services Block Grant application cycles, SAMHSA will provide States with revised application guidance and instructions. Proposed revisions to the previously approved application include: (1) Additional introductory text on the history and goals of federal mental health funding and an orientation to the transition to Performance Partnerships Grants, (2) changes in the format of the plan, and (3) the introduction of ten performance indicators as CMHS Core Performance Indicators. With the exception of one indicator, all are currently reported through the Uniform Reporting System (URS) and will not increase the State's burden; one indicator is currently in developmental status and beginning in FY 2004, States were given three years to develop capacity to report data for this indicator. The following table summarizes the annual burden for the revised application.

Part of application	Number of responses	Responses respondent	Burden response (hrs.)	Total burden hours
Plan—(Parts B and C):				
1 year	33	1	190	6,270
2 year	12	1	160	1,920
3 year	14	1	120	1,680
Implementation Report (Part D)	59	1	85	5,015
Data Tables (Part E)	59	1	40	2,360
Copy Plan and Report having more than 120 pages in length	10	2	1	20
Total	59	1		17,265

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 9, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–30950 Filed 12–15–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[CIS No. 2309–03]

Performance Review Boards—Appointment of Members

AGENCY: Department of Homeland Security, Bureau of Immigration and Customs Enforcement, and Bureau of Citizenship and Immigration Services.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Bureau of Immigration and Customs Enforcement (ICE), and the Bureau of Citizenship and Immigration Services (CIS) Performance Review Boards (PRBs) under 5 U.S.C. 4314(c)(4). The purpose of the PRBs is to review performance appraisals for senior executives and to recommend to the appointing authority proposed performance ratings, bonuses, and other related personnel actions.

DATES: This notice is effective December 16, 2003.

FOR FURTHER INFORMATION CONTACT: C. Rick Hastings, Director, Workforce and Information Management, 800 K Street, NW., Suite 5000, Washington, DC 20536, Telephone (202) 514–3636.

SUPPLEMENTARY INFORMATION: There are two PRBs, one in ICE and the other in CIS.

ICE Performance Review Board

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for senior executives who report to the Assistant Secretary, ICE. The members are: Joseph Mancias, Janis Sposato, Joseph Langlois, Terrance O'Reilly, Dea Carpenter, Andrea Quarantillo, and David R. Howell.

CIS Performance Review Board

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for all senior executives who report to the Director, CIS: The members are: Anthony Tangeman, Charles DeMore, Joseph Greene, J. Scott Blackman, John Chase, Grace Mastalli, and Paul Ladd.

Dated: December 11, 2003.

Ronald J. James,

Chief Human Capital Officer.

[FR Doc. 03–31076 Filed 12–12–03; 10:06 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the information collection outlined in 44 CFR Part 61, as it pertains to application for National Flood Insurance Program (NFIP) insurance.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). The National Flood Insurance Act of 1968 requires that the Federal Emergency Management Agency (FEMA) provide flood insurance at full actuarial rates reflecting the complete flood risk to structures built or substantially improved on or after the effective date for the initial Flood Insurance Rate Map (FIRM) for the community, or after December 31, 1974, whichever is later, so that the risks associated with buildings in flood-prone areas are borne by those located in such areas and not by the taxpayers at large. In accordance with Public Law 93–234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that are participating in the NFIP. When flood damage occurs to insured property, information is collected to report, investigate, negotiate and settle the claim.

Collection of Information

Title: National Flood Insurance Program Claims Forms.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0005.

Form Numbers: 81–40 (Worksheet-Contents-Personal Property), 81–41 (Worksheet-Building), 81–41A (Worksheet-Building Continued), 81–42 (Proof of Loss), 81–42A (Increased Cost of Compliance Proof of Loss), 81–43 (Notice of Loss), 81–44 (Statement as to Full Cost to Repair or Replacement Cost Coverage, Subject to the Terms and Conditions of this Policy), 81–57 (National Flood Insurance Program Preliminary Report), 81–58 (National Flood Insurance Program Final Report), 81–59 (National Flood Insurance

Program Narrative Report), 81–63 (Cause of Loss and Subrogation Report), 81–96 (Mobile Home Worksheet), 81–98 (Increased Cost of Compliance (ICC) Adjuster Report), 81–109 (Adjuster Preliminary Damage Assessment), 81–110 (Adjuster Certification Application).

Abstract: In order to document and pay claims made against the National Flood Insurance Program Direct Business this information is collected and reviewed as part of the claims handling process by the servicing company under contract to FEMA.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 19,605.

Number of Respondents: 5,000.

Frequency of Response: On occasion, dependent on weather and related flooding conditions.

Estimated Hours Per Respondent: The average time required for the adjuster for each claim filed and the policyholder to list the items damaged in the flood and meet with the adjuster concerning the loss is estimated to be 4 hours. Burden hours are derived from the reports of the Adjusters who meet with the policyholders, from local community officials, and from DHS–FEMA staff's personal experience.

Estimated Total Cost to Respondents: $405,412.00.

Estimated Total Cost to the Government: The adjusters are paid from a fee schedule based on the gross amount of the claim. The average adjuster payment was $500.00 per claim. The number of claims annually varies with the weather and related flooding conditions. We estimate 5,000 claims, which provides, reimbursements to adjusters for expenses incurred in accordance with NFIP standards to evaluate the loss and obtain a proof of loss signed by the claimant, of approximately $2,500,000.00. All these costs are paid by the National Flood Insurance Program and by the government.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) evaluate the accuracy of the estimated costs to respondents to provide the information to the agency; (d) enhance the quality, utility, and clarity of the information to be collected; and (e) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472, or e-mail address: *Muriel.Anderson@dhs.gov,* or facsimile number (202) 646–3524.

FOR FURTHER INFORMATION CONTACT: For additional information contact James S.P. Shortley, Director of Claims, Mitigation Division, Risk Insurance Branch at (202) 646–3418. Contact Ms. Anderson for copies of the proposed collection of information.

Dated: December 9, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–30990 Filed 12–15–03; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Invasive Species Advisory Committee; Request for Nominations

AGENCY: Office of the Secretary, National Invasive Species Council, Department of the Interior.

ACTION: Request for Nominations for the Invasive Species Advisory Committee.

Note: This is a republication of the notice published December 1, 2003 (68 FR 67202). It contains a correction to the date for nominations.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council, proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: Nominations must be received by January 15, 2004.

ADDRESSES: Nominations should be sent to Lori Williams, Executive Director, National Invasive Species Council (OS/SIO/NISC), 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Program Analyst, at (202) 513–7243, fax: (202) 371–1751, or by e-mail at *Kelsey_Brantley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

The purpose and role of the ISAC are to provide advice to the Invasive Species Council (Council), as authorized by Executive Order 13112, on a broad array of issues including preventing the introduction of invasive species, providing for their control, and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretaries of the Interior, Agriculture, and Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. Pursuant to the Executive Order, the Council developed a National Invasive Species Management Plan. The Plan is available on the Web at *http://www.invasivespecies.gov.* The Council is responsible for effective implementation of the Plan. The Council coordinates Federal agency activities concerning invasive species; prepares, revises, and issues the National Invasive Species Management Plan; encourages planning and action at local, tribal, State, regional and ecosystem-based levels; develops recommendations for international cooperation in addressing invasive species; facilitates the development of a coordinated network to document, evaluate, and monitor impacts from invasive species; and facilitates establishment of an information-sharing system on invasive species that utilizes, to the greatest extent practicable, the Internet.

The role of ISAC is to maintain an intensive and regular dialogue regarding the aforementioned issues. ISAC provides advice in cooperation with stakeholders and existing organizations addressing invasive species. The ISAC meets up to four (4) times per year.

Terms for approximately half of the current members of the ISAC will expire in March 2004. Current members of the ISAC are eligible for reappointment. The Secretary of the Interior will appoint members to ISAC in consultation with the Secretaries of Agriculture and Commerce. The Secretary of Interior actively solicits new nominees to the ISAC. Members of ISAC should be

knowledgeable in and represent one or more of the following communities of interests: weed science; fisheries science; rangeland management; forest science; entomology; nematology; plant pathology; veterinary medicine; the broad range of farming or agricultural practices; biodiversity issues; applicable laws and regulations relevant to invasive species policy; risk assessment; biological control of invasive species; public health/epidemiology; industry activities; international affairs or trade; tribal or state government interests; environmental education; ecosystem monitoring; natural resource database design and integration; and internet-based management of conservation issues.

Members should also have practical experience in one or more of the following areas: representing sectors of the national economy that are significantly threatened by biological invasions (*e.g.* agriculture, fisheries, public utilities, recreational users, tourism, etc.); representing sectors of the national economy whose routine operations may pose risks of new or expanded biological invasions (*e.g.* shipping, forestry, horticulture, aquaculture, pet trade, etc.); developing natural resource management plans on regional or ecosystem-level scales; addressing invasive species issues, including prevention, control and monitoring, in multiple ecosystems and on multiple scales; integrating science and the human dimension in order to create effective solutions to complex conservation issues including education, outreach, and public relations experts; coordinating diverse groups of stakeholders to resolve complex environmental issues and conflicts; and complying with NEPA and other federal requirements for public involvement in major conservation plans. Members will be selected in order to achieve a balanced representation of viewpoints, so to effectively address invasive species issues under consideration. No member may serve on the ISAC for more than three (3) consecutive terms. All terms will be limited to two (2) years in length.

Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of Title 5, United States Code.

Submitting Nominations

Nominations should be typed and should include the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the ISAC.
2. A resume or curriculum vitae.
3. At least two (2) Letters of reference.

Nominations should be sent no later than January 15, 2004, to Lori Williams, National Invasive Species Council (OS/SIO/NISC), 1849 C Street NW., Washington, DC 20240.

To ensure that recommendations of the ISAC take into account the needs of the diverse groups served, the Department of the Interior is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations.

Dated: December 9, 2003.

Lori C. Williams,

Executive Director, National Invasive Species Council.

[FR Doc. 03–30918 Filed 12–15–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment/ Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Elizabeth Cross Roads Property, Town of Elizabeth, Elbert County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Elizabeth Cross Roads LLC (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's), federally-listed as threatened, through loss and modification of its habitat associated with construction of the Elizabeth Cross Roads Business Park, a commercial development, and an associated utility line in Elizabeth, Elbert County, Colorado. The duration of the permit would be 10 years from the date of issuance.

We announce the receipt of the Applicant's incidental take permit application, which includes a combined Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the Preble's for the Elizabeth Cross Roads Property. The proposed EA/HCP is available for public review and comment. It fully describes the proposed project and the measures the Applicant would undertake to minimize and mitigate project impacts to the Preble's.

The Service requests comments on the EA/HCP and associated documents for the proposed issuance of the incidental take permit. All comments on the EA and permit application will become part of the administrative record and will be available to the public. We provide this notice pursuant to section 10(a) of the Act and the National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA/HCP should be received on or before February 17, 2004.

ADDRESSES: Comments regarding the permit application and EA/HCP should be addressed to Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215. Comments also may be submitted by facsimile to (303) 275–2371.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the EA/HCP and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize ''incidental take'' of listed species under limited circumstances. Incidental take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Elizabeth Cross Roads Property is located at the northwest corner of Highway 86 and County Road 17, along Running Creek, in the Town of Elizabeth, Elbert County, Colorado. The

project site is 8.1 hectares (20 acres), but the proposed project will directly impact a maximum of 1.7 hectares (4.2 acres) that may result in incidental take of the Preble's. Of the total amount of impacted acreage, 0.6 hectare (1.4 acres) will be temporarily disturbed and will be revegetated. An HCP has been developed as part of the preferred alternative. The proposed HCP will allow for the incidental take of the Preble's by permitting a commercial development and associated utilities to be constructed in an area that may be periodically used as foraging, breeding or hibernation habitat.

In addition to the Proposed Action, alternatives considered included—(a) Waiting for the Elbert County Regional HCP to be approved, (b) developing the site without avoidance of Preble's habitat, (c) developing the portion of the site that will have no impacts to Preble's habitat, and (d) no action. The draft EA analyzes the onsite, offsite, and cumulative impacts of the proposed project and all associated development and construction activities and mitigation activities on the Preble's, and also on other threatened or endangered species, vegetation, wildlife, wetlands, geology/soils, land use, water resources, air and water quality, and cultural resources. All of the proposed permanent impacts are in upland areas outside of the 100-year floodplain. The Applicant, using the Service's definition of Preble's habitat, has determined that the proposed project would impact approximately 1.7 hectares (4.2 acres) of potential Preble's habitat. The mitigation will likely provide a net benefit to the Preble's and other wildlife by planting of native shrubs and protecting existing habitat along Running Creek from any future development.

Only one federally-listed species, the threatened Preble's, occurs onsite and has the potential to be adversely affected by the project. To mitigate impacts that may result from incidental take, the HCP provides mitigation for the commercial site by protecting and enhancing 2.1 hectares (5.3 acres) of the Running Creek corridor onsite and its associated riparian areas from all future development. Approximately 0.6 hectare (1.41 acres) of temporarily disturbed grassland will be enhanced prior to construction by fencing to eliminate grazing and an additional 1.6 hectares (3.9 acres) will be enhanced native shrub planting and native grass reseeding. Measures will be taken during construction to minimize impact to the habitat, including the use of silt fencing to reduce the amount of sediment from construction activities that reaches the creek. All of the proposed mitigation area is within the boundaries of the Elizabeth Cross Roads property, all of which is included in the drainage basin of Running Creek.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the EA/HCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction of Elizabeth Cross Roads Business Park. The final permit decision will be made no sooner than 60 days after the date of this notice.

Dated: Novemeber 14, 2003.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 03–30957 Filed 12–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Mangement Service

Outer Continental Shelf (OCS), Alaska OCS Region, Beaufort Sea Oil and Gas Lease Sale 195, March 2005

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for information and Notice of Intent (NOI) to prepare an Environmental Assessment.

SUMMARY: The Secretary's approved 5-Year OCS Oil and Gas Leasing Program for 2002–2007 provides for 3 sales: Sales 186, 195, and 202 to be held in the Beaufort Sea program area. The pre-sale process incorporated planning and analysis for all three sales. From the initial step in the process (the call for information and nominations (call)) through the final Environmental Impact Statement (EIS)/Consistency Determination (CD) step, the process covered the multiple sale proposals. However, there will be complete National Environmental Policy Act (NEPA), OCS Lands Act, and Coastal Zone Management Act coverage for each sale, and each sale will be preceded by a proposed and final notice of sale. The environmental analysis and the CD for Sale 195 will focus primarily on new issues and/or changes in the State's federally-approved coastal management plan.

The call and NOI to prepare an EIS for Sales 186, 195, and 202 was published in the **Federal Register** on September 19, 2001, at 66 FR 48268. The Beaufort Sea final EIS for Sales 186, 195, and 202 was released in February 2003 (OCS EIS/EA, MMS 2003–001). The first sale, Sale 186, was held on September 24, 2003. The MMS is now initiating a request for information for Beaufort Sea Sale 195.

DATES: Comments on the Request for Information and on the NOI must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled ''Comments on the Request for Information for Beaufort Sea Sale 195'' or ''Comments on the NOI to Prepare an Environmental Assessment'', as appropriate.

FOR FURTHER INFORMATION CONTACT: Please call Tom Warren at (907) 271–6691 in MMS's Alaska OCS Region regarding questions on the request for information/NOI to prepare an Environmental Assessment.

SUPPLEMENTARY INFORMATION: The environmental analysis and the CD for Sale 195 will focus primarily on new issues that may have arisen since the completion of the EIS for Sales 186, 195, and 202 (February 2003) and on any changes that may have occurred in the State's coastal management plan. The process will lead to identification of the area to be included in the proposed notice of sale. Each of these steps, including the proposed notice of sale, provides for a public comment period. At the culmination of each step and after analysis of any public comments, the MMS will decide whether to proceed to the next step. This process will:

- Focus on the environmental analysis by revising types and levels of impacts that changed since the analysis was done for Sale 186;
- Result in any new issues being more easily highlighted by the public;
- Eliminate issuance for public review of repetitive, voluminous EISs for each sale; and
- Result in a more efficient and responsive application of the NEPA.

The MMS will analyze all comments received in response to this request for information and re-examine information previously submitted in response to the call and the draft and final EISs for Sales 186, 195, and 202. The MMS will then identify the area to be analyzed in the NEPA document.

This request for information does not indicate a decision to lease in the area described below. Final delineation of the areas for possible leasing will be made after completion of the pre-sale steps described above and in compliance with the final 5-year program and applicable laws, including

all requirements of the NEPA and the OCS Lands Act.

Request for Information

1. Authority

This request for information is published pursuant to the OCS Lands Act as amended (43 U.S.C. 1331–1356 (1994)) (OCS Lands Act), and the regulations issued thereunder (30 CFR part 256); and in accordance with the OCS Oil and Gas Leasing Program 2002 to 2007.

2. Purpose of Request

The purpose of the request for information is to gather information for Oil and Gas Lease Sale 195 in the Beaufort Sea, scheduled for March 2005. Information on oil and gas leasing, exploration, development, and production within the Beaufort Sea are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for decisions in the leasing process pursuant to the OCS Lands Act and regulations at 30 CFR part 256.

The call published in the **Federal Register** on September 19, 2001, requested information and nominations from industry for Sales 186, 195, and 202 in the Beaufort Sea Planning Area. The MMS will use the information submitted in response to that call and any new information submitted in response to this request for information to determine the area that will be included in a NEPA analysis. It is not necessary to re-submit comments sent in response to the multiple-sale call or for industry to re-submit their areas of interest if your comments or indications of interest have not changed since that time. This process seeks to identify new areas of concern and areas of interest to industry.

3. Description of Area

The area located offshore the State of Alaska in the Beaufort Sea Planning Area is the subject of this request for information. It extends offshore from about 3 nautical miles to approximately 60 nautical miles, in water depths from approximately 25 feet to 200 feet. A small portion of the outer limits of the sale area north of Harrison Bay drops to approximately 3,000 feet. This area consists of approximately 1,898 whole and partial blocks (about 9.9 million acres). A page-size map of the area accompanies this notice. A large scale request for information map showing the boundaries of the area on a block-by-block basis is available without charge from the Records Manager at the address given below, or by telephone request at (907) 271–6621. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each.

Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302; *http://www.mms.gov/alaska.*

4. Instructions on Request for Information

The request for information map delineates the area that is the subject of this request. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the request for information area that they wish to have included in Beaufort Sea Sale 195.

If you wish to comment, you may submit your comments by any one of the following methods:

- You may mail comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.
- You may also comment via e-mail to *akrfi@mms.gov*. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include ''Attn: Comments on Request for Information for Beaufort Sea Sale 195'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (907) 271–6621.
- Finally, you may hand-deliver comments to the Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the record, which we will honor to the extent allowable by law. There also may be additional circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

A. Areas of Interest to the Oil and Gas Industry

The MMS requests industry to submit any new information, including nomination of blocks that are of significant interest for exploration, development, and production. Information and nominations submitted in response to the multiple-sale call for Sales 186, 195, and 202, published on September 19, 2001 (66 FT 48268), will also be considered as information and nominations for the Sale 195 area identification process.

Nominations must be depicted on the request for information map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the request for information map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Nominators also are requested to rank blocks nominated according to priority of interest (*e.g.*, priority 1 (high), or 2 (medium)). Blocks nominated that do not indicate priorities will be considered priority 3 (low). Nominators must be specific in indicating blocks by priority and be prepared to discuss their range of interest and activity regarding the nominated area(s). The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

B. Relation to Coastal Management Plans

Comments also are sought on potential conflicts with approved local coastal management plans that may result from the sale and future OCS oil and gas activities. These comments should identify specific coastal management plan policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Request for Information map.

5. Use of Information From the Request for Information

Information submitted in response to this request for information will be used for several purposes. Responses will be used to:

- Help to further identify areas of potential oil and gas development;
- Identify environmental effects and potential use conflicts not previously addressed in the final EIS and CD for Sales 186, 195, and 202 (OCS EIS/EA, MMS 2003–0010);
- Develop any additional lease terms and conditions/mitigating measures that may be necessary; and
- Identify any potential conflicts between oil and gas activities and the Alaska coastal management plan not addressed in the CD for Sale 186.

6. Existing Information

The MMS has acquired a substantial amount of information, including that gained through the use of traditional knowledge, on the issues and concerns related to oil and gas leasing in the Beaufort Sea.

An extensive environmental, social, and economic studies program has been underway in this area since 1975. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and socio-cultural effects of oil and gas activities.

Information on the Studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Description of Area. A request may also be made via the Alaska OCS Region Web site at *http://www.mms.gov/alaska/ref/pubindex/pubsindex.htm*.

7. Tentative Schedule

The following is a list of tentative milestone dates applicable to Beaufort Sea Sale 195 covered by this call:

Request for Information published.	December 2003
Area Identification	February 2004
NEPA/Environmental Assessment Review (or Supplemental EIS) published.	August 2004
Proposed Notice and CD.	October 2004
Final Notice of Sale	February 2005
Tentative Sale Date	March 2005

Notice of Intent To Prepare an Environmental Analysis

1. Authority

The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)).

2. Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), MMS is announcing its intent to prepare an environmental assessment for Beaufort Sea Oil and Gas Lease Sale 195, scheduled for March 2005. The environmental assessment will be prepared to determine if there are significant new issues or impacts not previously addressed in the EIS for Sales 189, 195, and 202. If no significant new issues or impacts are identified, a finding of no new significant impacts will be issued. If information is submitted in response to this request for information that identifies significant new issues and/or impacts not previously addressed, a supplemental EIS may be prepared.

3. Instructions on Notice of Intent

Federal, State, tribal, and local governments and other interested parties are requested to send their written comments on new information and issues that should be addressed in the environmental assessment to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Request for Information, Item 4. Comments should be enclosed in an envelope labeled ''Comments on the Notice of Intent to Prepare an Environmental Assessment for Beaufort Sea Sale 195.'' Comments are due no later than 45 days from publication of this notice.

Dated: December 2, 2003.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. 03–31013 Filed 12–15–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of intended submission to the Office of Management and Budget (OMB) and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*) and 5 CFR part 1320, the National Park Service (NPS) invites comments on its intention to request OMB to approve an existing collection in use with an OMB control number (1024–0245) associated with the United States Park Police Personal History Statements Questionnaire. The purpose of the United States Park Police Personal History Statement Questionnaire is to collect detailed information that will be used principally as a basis for an investigation to determine suitable applicants for the position of United States Park Police Officer.

DATES: To assure that the NPS considers your comments on this notice; NPS must receive the comments on or before February 17, 2004.

SEND COMMENTS TO: Lieutenant Charles A. Orton, Assistant Commander Human Resources Office, United States Park Police, 1100 Ohio Drive, SW., Washington, DC 20024, via fax at 202–619–7479, or via e-mail at *Charles_A_Orton@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Charles A. Orton, Assistant Commander Human Resources Office, United States Park Police, 1100 Ohio Drive, SW., Washington, DC 20024, via fax at 202–619–7479, or via e-mail at *Charles_A_Orton@nps.gov* or via telephone at 202–619–7001.

SUPPLEMENTARY INFORMATION:

Title: United States Park Police Personal History Statements Questionnaire.

OMB Number: 1024–0245.

Expiration Date of Approval: 2/29/04.

Type of Request: Existing collection in use with an OMB Control number.

Abstract: This information collection has an impact on individuals that apply to the position of United States Park Police Officer. The NPS uses the information collections to hire adequately screened applicants for the position of United States Park Police Officer.

Respondents: Individual applicants to the position of United States Park Police Officer.

Estimate of Burden: NPS estimates that the public burden for the United States Personal History Statements Questionnaire collection of information will average 8 hours per applicant. This estimate of burden includes time for reviewing instructions, searching information sources, and gathering and reporting the information.

Estimated Number of Respondents: NPS estimates that there are 600 respondents. This is the gross number of respondents for all of the elements included in this information collection. The net number of applicants in this information collection annually are 600 applicants. Applicants complete the application each time a vacancy announcement is published.

Estimated average number of Applicant responses: 600 annually.

Estimated average burden hours per Applicant response: 8 hours.

Estimated Annual Burden on Respondents: 4,800 Hours.

NPS is soliciting comments regarding:

(1) Whether the collection of information is necessary for the proper performance of the functions of NPS, including whether the information will have practical utility;

(2) The accuracy of the burden estimate including the validity of the method and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of collecting the information, including through the use of appropriate automated, electronic, mechanical, or other forms of information technology; or,

(5) Any other aspect of this collection of information.

NPS will summarize and include in the request for OMB approval all responses to this notice. All comments will also become a matter of public record. You can obtain copies of the information collection from Lieutenant Charles A. Orton, Assistant Commander Human Resources Office, United States Park Police, 1100 Ohio Drive, SW., Washington, DC 20024.

Dated: December 10, 2003.

Leonard E. Stowe,

Acting Information Collection Clearance Officer, National Park Service, WAPC.

[FR Doc. 03–30925 Filed 12–15–03; 8:45 am]

BILLING CODE 4312–JK–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Record of Decision for the Vessel Quotas and Operating Requirements Environmental Impact Statement, Glacier Bay National Park and Preserve, AK

SUMMARY: The National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the Vessel Quotas and Operating Requirements Environmental Impact Statement (EIS), Glacier Bay National Park and Preserve, Alaska.

The record of decision documents the NPS decision to modify quotas and operating requirements for four types of motorized watercraft—cruise ships, tour, charter, and private vessels—in Glacier Bay National Park and Preserve. The decision addresses the continuing demand for motorized watercraft access into Glacier Bay in a manner that protects park resources and values while also providing a range of opportunities for visitors consistent with park purposes and values. It was based on consideration of the park's purposes and mission, resources and values, NPS policies, comments received throughout the EIS process, and information and analysis in the EIS.

The ROD briefly discusses the background for the planning effort, describes the six alternatives considered during the EIS process, states the decision and discusses the basis for it, specifies and describes the environmentally preferable alternative, identifies measures to minimize potential environmental harm, identifies ongoing and future studies and monitoring, and summarizes the results of public involvement during the planning process.

The NPS has selected alternative 6, as described in the FEIS, with the following modifications:

- The July 1 through August 21 timeframe during which a 0.25-nautical-mile vessel approach distance to a seal hauled out on ice in Johns Hopkins Inlet waters will be retained as in current regulations and will not be extended to year-round.
- A 13-knot speed limit for vessels greater than or equal to 262 feet (80 meters) will be in effect in Glacier Bay as needed, rather than a year-round basis.
- Existing conditions do not support immediate implementation of motor vessel limits in Dundas Bay. Studies and monitoring are insufficient to support the need for limits at this time. The Park Service will impose limits when a clearer need is established. The Park Service will undertake study and monitoring of use and resource conditions in Dundas Bay.

ADDRESSES: Copies of the ROD are available on request from: Nancy Swanton, EIS Project Manager, National Park Service, Glacier Bay National Park and Preserve, c/o 240 West 5th Avenue, Anchorage, Alaska 99501. Telephone: (907) 644–3696.

FOR FURTHER INFORMATION CONTACT: Nancy Swanton, EIS Project Manager, National Park Service, Glacier Bay National Park and Preserve, c/o 240 West 5th Avenue, Anchorage, Alaska 99501. Telephone: (907) 644–3696.

SUPPLEMENTARY INFORMATION: The NPS prepared an EIS, as required, under the National Environmental Policy Act (NEPA) of 1969 and Council of Environmental Quality regulations (40 Code of Federal Regulations [CFR] 1500).

A Notice of Intent to prepare an EIS, published in the **Federal Register** (FR) in May 6, 2002 (67 FR 8313), formally initiated the National Park Service planning and EIS effort. The draft EIS (DEIS) was issued in March 2003. A **Federal Register** notice announcing the availability of the final EIS (FEIS) was published by the U.S. Environmental Protection Agency on October 10, 2003, commencing the required 30-day no-action period (68 FR 58668). The final EIS describes and analyzes the environmental impacts of five action alternatives and a no-action alternative. The NPS has selected alternative 6, as described in the FEIS, with the three modifications listed above. The selected alternative is described below.

Vessel Quotas

The current daily vessel quotas in Glacier Bay will not change. They will continue as follows: two cruise ships, three tour vessels, six charter vessels, and 25 private vessels. Daily quotas for cruise ships and tour vessels will continue to apply year-round. Daily quotas for charter and private vessels will continue to apply from June 1 through August 31.

Seasonal entry quotas will be eliminated. Seasonal-use day quotas will continue to apply. For cruise ships, the seasonal-use day quota will be 139 from June 1 through August 31, with potential for increases to a maximum of 184. In May and September, the seasonal-use day quota for cruise ships will be 92, with potential for increases up to 122 (*see* table 1). Any increases will be incremental and based on scientific and other information and applicable authorities. The seasonal-use day quota for tour, charter, and private vessels is the allowable daily vessel quota multiplied by the number of days in the season. The season during which seasonal-use days will apply for these three types of vessels is June 1 through August 31 (92 days). Thus, the seasonal-use day quotas for tour, charter, and private vessels are:

- 276 for tour vessels (three per day multiplied by 92 days).
- 552 for charter vessels (six per day multiplied by 92 days).

- 2,300 for private vessels (25 per day multiplied by 92 days).

TABLE 1.—SUMMARY OF VESSEL QUOTAS FOR GLACIER BAY, MAY 1–SEPTEMBER 30 [1]

Vessel class	Daily vessel quota		Seasonal-use days	
	June–Aug.	May and Sept.	June–Aug.	May and Sept.
Cruise ship [1]	2	2	[4] 139	[5] 92
Tour vessel [1]	3	3	276	183
Charter vessel [2]	6	([3])	552	([3])
Private vessel [2]	25	([3])	2,300	([3])

[1] Cruise ships and tour vessels are limited to the daily vessel quota year-round.
[2] Charter and private vessels are not subject to quotas from September through May.
[3] No limit.
[4] Potentially up to 184.
[5] Potentially up to 122.

Vessel Operating Requirements

The NPS is revising operating requirements, as described below. These revisions are intended to protect park resources and values, improve visitor experience, and simplify regulations.

Permitting Procedures. Permits will be issued to a designated individual for a specific vessel over a specific period of time, rather than issued to a vessel.

The exemption for private vessels based in Bartlett Cove to enter and exit Glacier Bay (these are not currently counted as daily entries) without a permit will be eliminated entrance to Glacier Bay.

Up to 10 permits may be issued to private vessels on ''short-notice'' daily. This number may be adjusted annually through use of the park compendium. These permits will be issued, on a space available basis, to any individual who requests a permit within 48 hours of entering Glacier Bay.

Speed Restrictions.

- The superintendent may impose a 13-knot speed limit, as necessary, for motor vessels greater than or equal to 262 feet (80 meters) in length throughout Glacier Bay because of the presence of humpback whales. Park Service staff will monitor whale abundance, movements, and distribution, and provide this information to the park superintendent, who will determine whether to set a 13-knot speed limit for vessels of this length or greater.
- From May 15 through September 30, in lower Bay whale waters, operating a motor vessel at more than 20 knots through the water will be prohibited.
- At any time of year in waters of Glacier Bay or Dundas Bay, the following will be prohibited: operating a motor vessel at more than 13 knots through the water when and where the superintendent has designated a maximum speed of 13 knots because of the presence of whales.

Whale Water Geographic Locations. Whale waters would be designated within the current lower Glacier Bay waters from May 15 through September 30. As authorized in current regulations, the superintendent may designate temporary whale waters and impose motor vessel speed restrictions in whale waters in any portion of Glacier Bay or Dundas Bay.

Measurement of Vessel Speed. Vessel speed will be measured as ''through the water,'' the same as specified in current regulations.

Closed Waters, Islands, and Other Areas. No additional waters, islands, or other areas will be closed to all motor vessels under this decision.

Non-Motorized (Closed) Waters for Cruise Ships. Additional waters closed to cruise ships are Beardslee Entrance and the entrance to Adams Inlet in Glacier Bay.

Non-Motorized (Closed) Waters for Tour Vessels. Additional waters closed to tour vessels are Beardslee Entrance and the entrance to Adams Inlet in Glacier Bay.

Ferry Vessel Operating Requirements. Per section 127, Public Law 105–83, the ferry is restricted to the sole purpose of accessing the Bartlett Cove dock. The ferry will be subject to speed, distance from coastlines, and other operating requirements common to all vessel types. The ferry may not deviate from a direct course between the mouth of Glacier Bay and Bartlett Cove.

Vessel Routes. No vessel routes will be established except in designated whale waters (*i.e.,* the lower Bay whale waters), and following language in the current regulations will remain unchanged: ''Except on vessels actually fishing as otherwise authorized by the superintendent or vessels operating solely under sail, while in transit, operators of motor vessels over 18 feet in length will in all cases where the width of the water permits, maintain a distance of at least one nautical mile from shore, and, in narrower areas will navigate in mid-channel: Provided, however, that unless other restrictions apply, operators may perpendicularly approach or land on shore (*i.e.,* by the most direct line to shore) through designated whale waters.''

Harbor Seal Vessel Approach Distance in Johns Hopkins Inlet. This will remain unchanged from the current regulations. That language is as follows: ''The following is prohibited: operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58 deg. 54.2 latitude (an imaginary line running approximately due west from Jaw Point), within 0.25 nautical mile of a seal hauled out on ice; except when safe navigation requires, and then with due care to maintain the 0.25 nautical mile distance from concentrations of seals.'' This regulation will continue to apply from July 1 through August 31. (Note: In accordance with the current regulations, which will not be changed with this decision, Johns Hopkins Inlet waters are closed to cruise ships from May 1 to August 31 and to all vessels from May 1 to June 30.)

Deviation from Vessel Operating Requirements. Deviation from vessel operating requirements may be made when the safety of passengers or the vessel is immediately threatened. Where possible, operators shall notify the Park Service before the deviation. In all cases, notifications must be made as soon as it is safe to do so.

Implementation of the decision will require promulgation of regulations, revising 36 CFR 13.65. Draft regulations are planned to be published for public comment in 2004, and final regulations are anticipated by early 2005.

Dated: November 26, 2003.

Thomas J. Ferranti,

Acting Regional Director, Alaska.

[FR Doc. 03–30930 Filed 12–16–03; 8:45 am]

BILLING CODE 4312–HX–M

DEPARTMENT OF THE INTERIOR

National Park Service

Star-Spangled Banner National Historic Trail Study Report Draft Environmental Impact Statement; Maryland, District of Columbia, and Virginia

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the draft environmental impact statement for the Star-Spangled Banner National Historic Trail Study.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(c), the National Park Service announces the availability of the draft Environmental Impact Statement for the Star-Spangled Banner National Historic Trail.

DATES: The National Park Service will accept comments from the public on the Draft Environmental Impact Statement for 60 days after publication of this notice. No public meetings are scheduled at this time.

ADDRESSES: Information will be available for public review and comment from the Northeast Region, National Park Service, 200 Chestnut Street, Philadelphia, PA 19106 or at *http://www.nps.gov/phso/jstarspan/.*

FOR FURTHER INFORMATION CONTACT: William Sharp, Project Manager, Northeast Region, 215–597–1655 or *william_sharp@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit your comments by any one of several methods. You may mail or e-mail comments to William Sharp, Northeast Region, 200 Chestnut Street, Philadelphia, PA 19106, or *william_sharp@nps.gov.* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 5, 2003.

Marie Rust,

Director, Northeast Region, National Park Service.

[FR Doc. 03–30926 Filed 12–15–03; 8:45 am]

BILLING CODE 4310–25–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 6, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 31, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALASKA

Ketchikan Gateway Borough—Census Area

Guard Island Lighthouse, (Light Stations of the United States MPS), Guard Islands in the Clarence Strait at the N end of Tongass Narrow, 9.6 mi. NW. of Ketchikan, Ketchikan, 03001378

ARKANSAS

Arkansas County

U.S. Post Office—Stuttgart, 302 S. Maple, Stuttgart, 03001380

Mississippi County

Wildy, Edward Samuel, Barn, 1198 S. AR 136, Etowah, 03001382

Randolph County

Ravenden Springs School, (Public Schools in the Ozarks MPS) AR 90, Ravenden Springs, 03001379

Woodruff County

George Washington Carver High School Home Economics Building, 900 Pearl St., Augusta, 03001381

COLORADO

Montezuma County

Joe Ben Wheat Site Complex, (Great Pueblo Period of the McElmo Drainage Unit MPS) Address Restricted, Yellow Jacket, 03001383

DELAWARE

New Castle County

Liston Range Front Lighthouse, 1600 Belts Rd., Bay View Beach, 03001386

St. Joseph's Catholic Church, 1012 French St., Wilmington, 03001385

IDAHO

Idaho County

Chamberlain Ranger Station Historic District, Frank Church—River of No Return Wilderness, Payette National Forest, 03001388

IOWA

Woodbury County

Mylius—Eaton House, 2900 Jackson St., Sioux City, 03001390

Sioux City Masonic Temple, 820 Nebraska St., Sioux City, 03001389

KANSAS

Atchison County

Stein, Frederick W., House, 324 Santa Fe, Atchison, 03001391

Butler County

Towanda Masonic Lodge No. 30 A.F. and A.M., 401 Main St., Towanda, 03001392

Douglas County

Greenlee, Michael D., House, (Lawrence, Kansas MPS) 947 Louisiana St., Lawrence, 03001387

Ford County

Hennessy Hall, Saint Mary of the Plains Campus, 240 San Jose Dr., Dodge City, 03001396

Harvey County

Lincoln School, 406 W. Sixth St., Newton, 03001395

Newton Stadium, (New Deal-Era Resources of Kansas MPS) Athletic Park, Newton, 03001394

Pottawatomie County

Dennis Quarry, (Aboriginal Lithic Source Areas in Kansas MPS) Address Restricted, Onaga, 03001393

Shawnee County

East Topeka Junior High School, (New Deal-Era Resources of Kansas MPS) 1210 E. 8th St., Topeka, 03001397

Luttjohann, Fred and Cora, House, 2053 S. Kansas Ave., Topeka, 03001384

MAINE

Cumberland County

Androscoggin Swinging Bridge, Spanning the Androscoggin R bet. Topsham and Brunswick, Brunswick, 03001404
Intervale Farm, 1047 Intervale Rd., New Gloucester, 03001407
Steep Falls Library, (Maine Public Libraries MPS) 1128 Pequawket Trail, Steep Falls, 03001406

Hancock County

Hammond, Edward J., Hall, Main St., Winter Harbor, 03001405
Jarvis, Col. Charles and Mary Ann, Homestead, 10 Surry Rd., Ellsworth, 03001403

Piscataquis County

Kineo Cottage Row Historic District, West side of Kineo Peninsula in Moosehead Lake, Kineo Township, 03001408

Sagadahoc County

Trufant Historic District, Portions of Corliss, Highland, Middle, Pine and Washington Sts., Bath, 03001402

NEW MEXICO

Los Alamos County

Grant Road, (Homestead and Ranch School Era Roads and Trails of Los Alamos, New Mexico MPS) Approx. 131 ft. N of the NE corner of the jct. of Diamond Dr. and San Ildefonso Rd., Los Alamos, 03001409

Santa Fe County

Jones, Everret, House, (Buildings Designed by John Gaw Meem MPS) 210 Brownell Howland Rd., Santa Fe, 03001411

Taos County

Lawrence, D.H., Ranch Historic District, Lawrence Rd., approx 2.75 mi. E. of NM 522 on U.S. Forest Service Rd. 7, San Cristobal, 03001410

NEW YORK

Livingston County

First Presbyterian Church of Tuscarora, 8082 Main St., Tuscarora, 03001400

Rensselaer County

Carner, John Jr., House, 1310 Best Rd., East Greenbush, 03001399

Westchester County

Harden, Edward, Mansion, 200 North Broadway, Sleepy Hollow, 03001401
McVickar House, 131 Main St., Irvington, 03001398

OHIO

Montgomery County

Central Branch, National Home for Disabled Volunteer Soldiers, 4100 W. Third St., Dayton, 03001412

OREGON

Multnomah County

Mount Tabor Park Reservoirs Historic District, 1900 SE Reservoir Loop, 6445 SE. Salmon St., and 1600 SE. 60th Ave., Portland, 03001446
Washington Park Reservoirs Historic District, Res. 3 2549 SE. Murray Ave., Res. 4 2521 SW. Murray Ave., Portland, 03001447

PENNSYLVANIA

Lehigh County

Leaser, Frederick and Catherine, Farm, 7654 Leaser Rd., Lynn Township, 03001420

TEXAS

Cameron County

Rector Road Bridge at Clear Creek, (Historic Bridges of Texas MPS) Approx. 2.5 mi. SE. of Sanger, Sanger, 03001418

Cherokee County

Jacksonville Post Office, 402 E. Rusk St., Jacksonville, 03001417

Denton County

Gregory Road Bridge at Duck Creek, (Historic Bridges of Texas MPS) Approx. 0.5 mi. W. of Lois Rd., near the N. Denton County line, Sanger, 03001419

Gonzales County

Gonzales Memorial Museum and Amphitheater Historic District, 414 Smith St., Gonzales, 03001414

McLennan County

McDermott Motors Building, 1125 Washington Ave., Waco, 03001415

Travis County

Arnold Bakery, 1010 E. Eleventh St., Austin, 03001416
Old West Austin Historic District (Boundary Increase), Roughly bounded by Funston, W. 34th, Texas Loop 1, Oakmont, and W. 31st, Austin, 03001413

VIRGINIA

Alexandria Independent City

Alfred Street Baptist Church, (African American Historic Resources of Alexandria, Virginia MPS) 313 S. Alfred St., Alexandria (Independent City), 03001423
Beulah Baptist Church, (African American Historic Resources of Alexandria, Virginia MPS) 320 S. Washington St., Alexandria (Independent City), 03001424
Davis Chapel, (African American Historic Resources of Alexandria, Virginia MPS) 606–A S. Washington St., Alexandria (Independent City), 03001428
Hepburn, Moses, Rowhouses, (African American Historic Resources of Alexandria, Virginia MPS) 206–212 N. Pitt St., Alexandria (Independent City), 03001426
Johnson, Dr. Albert, House, (African American Historic Resources of Alexandria, Virginia MPS) 814 Duke St., Alexandria (Independent City), 03001422
Odd Fellows Hall, (African American Historic Resources of Alexandria, Virginia MPS) 411 S. Columbus St., Alexandria (Independent City), 03001427
Seaton, George Lewis, House, (African American Historic Resources of Alexandria, Virginia MPS) 404 S. Royal St., Alexandria (Independent City), 03001425

Bath County

Millboro School, Jct. of VA 668 (High St.) and VA 633 (Main St.), Millboro, 03001439

Brunswick County

Mason-Tillett House, 1050 Christanna Highway, Valentines, 03001443

Essex County

St. Matthew's Church, Jct. of VA 17, VA 631, and VA 724, Champlain, 03001429

Fairfax County

Silverbook Methodist Church, 8616 Silverbrook Rd., VA 600, Lorton, 03001438

Fauquier County

Hollow, The, VA 688, Leeds Manor Rd. and N. of Marshall School Ln., Markham, 03001442

Northampton County

Cessford, 16546 Courthouse Rd., Eastville, 03001441

Petersburg Independent City

Stewart-Hinton House, 416 High St., Petersburg (Independent City), 03001437

Pittsylvania County

North Danville Historic District, Roughly bounded by Riverside Dr., Claiborne St., Leemont Cemetery, Novle Ave., and Scales St., Danville, 03001432

Portsmouth Independent City

Monumental Methodist Church, 450 Dinwiddie St., Portsmouth (Independent City), 03001430

Powhatan County

Fine Creek Mills Historic District, 2425–2434 Robert E. Lee Rd. (VA 641), Fine Creek Mills, 03001440

Prince William County

Pilgrim's Rest (Boundary Increase), 2101 Belmont Grove Rd., Nokesville, 03001434

Richmond Independent City

Virginia Washington Monument, Capitol Square, Richmond (Independent City), 03001421

Southampton County

Vincent, William H., House, 23016 Main St., Capron, 03001444

Suffolk Independent City

West End Historic District, Roughly bounded by Causey Ave., Seaboard Coast Lines RR tracks, Pender St., Wellons St., Linden Ave., and RR tracks, Suffolk (Independent City), 03001433

Westmoreland County

St. Peter's Episcopal Church, Jct. of VA 3 and VA 205, Oak Grove, 03001445

Winchester Independent City

Fair Mount, 311 Fairmount Ave., Winchester (Independent City), 03001431

Wise County

Derby Historic District, VA 686, from a point beginning 1 mi. above the jct. with VA 78 and extending for 1.2 mi. to the NW., Appalachia, 03001436

Stonega Historic District, VA 600, form 0.1 mi. N. of jct. with VA 685 to a point approx. 3 mi. to the NE., Appalachia, 03001435

A request for a MOVE has been made for the following resource:

TEXAS

Harris County

Cohn, Arthur B., House 1711 Rusk Ave. Houston, 85002771

A request for REMOVAL has been made for the following resources:

MAINE

Androscoggin County

Livermore, Deacon Elijah, House 6 mi. S. of Livermore Falls on Hillman's Ferry Rd., Livermore Falls vicinity, 75000089

Kennebec County

Shrewsbury Round Barn, 109 Benton Ave., Winslow, 82000758

Lincoln County

Smith, Asa, Homestead, ME 218, Alna, 83000465

York County

First Parish Congregational Church, 12 Beach St., Saco, 90000921

[FR Doc. 03–30927 Filed 12–15–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 29, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 31, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Stanislaus County

Plaza Building, Plaza #2, Patterson, 03001359

COLORADO

Costilla County

San Luis Souther Railway Trestle, (Railroads in Colorado, 1858–1948 MPS) abandoned section of Costilla Cty Rd. 12, Blanca, 03001361

Garfield County

Canyon (Canon) Creek School, District No. 32, (Rural School Buildings in Colorado MPS) 0566 Cty Rd. 137, Glenwood Springs, 03001360

Larimer County

Benson, A.S., House, 463 W. 5th St., Loveland, 03001362

FLORIDA

Indian River County

Old Town Sebastian Historic District, West, Bounded by Palmetto Ave, Lake and Main Sts., Sebastian, 03001364

Palm Beach County

Lofthus (shipwreck), 0.75 mi. N. of Boynton Inlet, 175 yards offshore, Boynton Beach, 03001363

GEORGIA

Banks County

Turk Family Farm, 534 Carson Segars Rd., Maysville, 03001365

IDAHO

Gooding County

Schubert Theatre, (Motion Picture Theater Buildings in Idaho MPS) 402 Main St., Gooding, 03001367

Idaho County

Baker, James V. and Sophia, House, 204 Broadway St., Cottonwood, 03001366

Latah County

White Spring Ranch, 1004 Lorang Rd., Genesee, 03001368

Washington County

Wilson House, 75 N. 5th St., Cambridge, 03001369

IOWA

Mahaska County

Vander Wilt Farmstead Historic District, 1345 IA 163, Black Oak Twp., Sec. 22, T26N, R17W, SW. of Ne, Leighton, 03001370

MARYLAND

Baltimore Independent city

Ednor Gardens Historic District, Roughly bounded by Ellerslie Ave., 36th St., The Alameda, Andover Rd. and Chestnut Hill Ave., Baltimore (Independent City), 03001373

Mayfield Historic District, Lake Montebello Rd.—Chesterfield Ave.,—Crossland Ave.—Erdman Ave., Baltimore (Independent City), 03001371

MASSACHUSETTS

Bristol County

Attleborough Falls Historic District, Mt. Hope St., just W of Reservoir St. to the 10 Mile River, Towne St. from Mt. Hope St. to the 10 Mile River, North Attleborough, 03001372

MINNESOTA

Dakota County

Oheyawahi—Pilot Knob, off MN 55, Mendota Heights, 03001374

NORTH CAROLINA

Gaston County

Downtown Gastonia Historic District, Roughly bounded by Main Ave., Broad St., Second Ave., and Chester St., Gastonia, 03001375

TEXAS

Fort Bend County

Woods, B. Ray and Charlotte, House, 610 Woods Ln., Katy, 03001377

Hunt County

Central Christian Church, 2611 Wesley St., Greenville, 03001376

[FR Doc. 03–30928 Filed 12–15–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 22, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 31, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Butte County

Forks of Butte, Address Restricted, Paradise, 03001357

Inyo County

Reilly, Address Restricted, Trona, 03001358

Lassen County

Bruff's Rock Petroglyph Site, Address Restricted, Susanville, 03001356

Los Angeles County

Lincoln Park Historic District, Roughly bounded by McKinley Ave., Towne Ave., Pasadena St. and Garey Ave., Pomona, 03001347

San Luis Obispo County

Atascadero Printery, 6351 Olmeda, Atascadero, 03001355

IOWA

Johnson County

Henyon–Kasper—Duffy Barn, 2520 IA 1 NE., Solon, 03001348

Story County

Old Town Historic District, (Home for Science and Technology: Ames, IA MPS) Bet. Duff and Clark Ave., and 7th and 9th Sts., Ames, 03001349

MINNESOTA

Winona County

Winona High School and Winona Junior High School, 166 and 218 W. Broadway St., Winona, 03001350

NEW MEXICO

Dona Ana County

Rio Grande Theatre, 211 N. Downtown Mall, Las Cruces, 03001352

Valencia County

La Capilla de San Antonio de Los Lentes, (Religious Properties of New Mexico MPS) Los Lentes Rd., Los Lentes, 03001351

NEW YORK

Rensselaer County

Petersburgh United Methodist Church, 12 Head of Lane Rd., Petersburgh, 03001354

Sand Lake Baptist Church, 2960 NY 43, Averill Park, 03001353

[FR Doc. 03–30929 Filed 12–15–03; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–474]

Certain Recordable Compact Discs and Rewritable Compact Discs; Notice of Commission Decision To Review Portions of an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review portions of the presiding administrative law judge's (''ALJ's'') final initial determination (''ID'') and to affirm ALJ Order No. 32.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the public version of the ALJ's final ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 26, 2002, based on a complaint filed by U.S. Philips Corporation of Tarrytown, NY (''Philips'' or ''complainant''). 67 FR 48,948 (2002). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain recordable compact discs and rewritable compact discs by reason of infringement of certain claims of six U.S. patents: claims 1, 5, and 6 of U.S. Patent No. 4,807,209; claim 11 of U.S. Patent No. 4,962,493; claims 1, 2, and 3 of U.S. Patent No. 4,972,401; claims 1, 3, and 4 of U.S. Patent No. 5,023,856; claims 1–5, and 6 of U.S. Patent No. 4,999,825; and claims 20, 23–33, and 34 of U.S. Patent No. 5,418,764. 67 FR 48,948 (2002).

The notice of investigation named 19 respondents, including GigaStorage Corporation Taiwan of Hsinchu, Taiwan; GigaStorage Corporation USA of Livermore, California (collectively, ''GigaStorage''); and Linberg Enterprise Inc. (''Linberg'') of West Orange, New Jersey. 67 FR 48,948 (2002). On August 14, 2002, the ALJ issued an ID (Order No. 2) granting a motion to intervene as respondents by Princo Corporation of Hsin-Chu, Taiwan, and Princo America Corporation of Fremont, California (collectively, ''Princo''). That ID was not reviewed by the Commission. GigaStorage, Linberg, and Princo (''respondents'') are the only remaining active respondents in this investigation. *See* ALJ Order No. 6 (an unreviewed ID terminating eight respondents on the basis of a consent order); ALJ Order No. 17 (an unreviewed ID terminating each of three respondents on the basis of a consent order and settlement agreement); ALJ Order No. 18 (an unreviewed ID terminating one respondent on the basis of a consent order and settlement agreement); and ALJ Order No. 21 (an unreviewed ID finding four respondents in default).

On April 7, 2003, the ALJ issued an ID (ALJ Order No. 20) granting complainant's unopposed motion for summary determination that Linberg, GigaStorage, and Princo have each sold for importation, imported, and/or sold after importation products accused of infringing one or more of the asserted patent claims. That ID was not reviewed by the Commission.

A tutorial session was held on June 3, 2003, and an evidentiary hearing was held from June 10, 2003, through June 20, 2003.

On June 30, 2003, the ALJ issued an order (ALJ Order No. 32) granting a motion *in limine* filed by respondents to preclude complainant from asserting the doctrine of unclean hands with respect to respondents' affirmative defense of patent misuse.

The ALJ issued his final ID on October 24, 2003. Although he found that none of the asserted claims are invalid, that the accused products infringe the asserted claims, and that the domestic industry requirement of section 337 has been satisfied, he found no violation of section 337 because he concluded that all of the asserted patents are unenforceable by reason of patent misuse.

On November 5, 2003, complainant Philips petitioned for review of the portion of the final ID that found the asserted patents unenforceable due to patent misuse, and also appealed ALJ Order No. 32. On the same day, respondents filed a paper entitled ''Statement of Respondents Princo Corp., Princo America Corp., Gigastorage Corp. Taiwan, Gigastorage Corp. USA, and Linberg Enterprises, Inc. Regarding the Initial Determination,'' in which respondents urged the Commission to adopt the ID in its entirety. Respondents and the IA filed responses to complainant's petition for review.

On December 8, 2003, the ALJ issued his recommended determination on remedy and bonding.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined to affirm ALJ Order No. 32 and to review the ID's findings of fact and conclusions of law concerning patent misuse. The Commission has

determined not to review the remainder of the ID, including the findings of fact and conclusions on the issues of infringement and invalidity of the asserted claims and the domestic industry requirement of section 337.

In connection with the final disposition of this investigation, the Commission may issue (1) An order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's December 8, 2003, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on January 9, 2004. Reply submissions must be filed no later than the close of business on January 16, 2004. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.45).

By order of the Commission.

Issued: December 10, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–30970 Filed 12–15–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration

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 preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 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 Employment Standards Administration is soliciting comments concerning the proposed collection: Medical Travel Refund Request (OWCP–957). A copy of the proposed information collection request can be obtained by contacting the office 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 February 17, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP reimburse beneficiaries for travel expenses incurred for covered medical treatment. In order to determine whether amounts requested as travel expenses are appropriate, OWCP must receive certain data elements, including the signature of the physician for expenses claimed under the BLBA. Form OWCP–957 is the standard format for the collection of these data elements. The OWCP–957 is used by OWCP and its contractor bill processing staff to process reimbursement requests for travel expenses. This information collection is currently approved for use through June 30, 2004.

II. Review Focus

The Department of Labor 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.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to determine if requests for reimbursement for out-of-pocket expenses incurred when traveling to medical providers for covered medical testing or treatment should be paid.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Medical Travel Refund Request.

OMB Number: 1215–0054.

Agency Number: OWCP–957.

Affected Public: Individual or households.

Total Respondents: 52,221.

Total Responses: 52,221.

Time Per Response: 10 minutes.

Frequency: On occasion.

Estimated Total Burden Hours: 8,669.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $19,000.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 10, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–30968 Filed 12–15–03; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

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 preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 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 Employment Standards Administration is soliciting comments concerning the proposed collection: Employment Information Forms (WH–3 and WH–3 Spanish). A copy of the proposed information collection request can be obtained by contacting the office 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 February 17, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

Section 11(d) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et. seq.*, provides that the Secretary of Labor investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to the Act. Similar provisions are also contained in the Public Contracts Act, the Service Contract Act, the Davis-Bacon Act, the Consumer Credit Protection Act, the Employee Polygraph Protection Act, the Migrant and Seasonal Agricultural Worker Protection Act, and the Family and Medical Leave Act of 1993, all of which are enforced by the Wage and Hour Division of the U.S. Department of Labor. The Form WH–3 is an optional form used by complainants and others to provide information about alleged violations of the labor standards provisions of the Acts cited above. The form is provided in both English and Spanish versions. This information collection is currently approved for use through June 30, 2004.

II. Review Focus

The Department of Labor 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.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to meet the statutory requirements to investigate alleged violations of the various labor standards laws enforced by the Wage and Hour Division.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Employment Information Form.

OMB Number: 1215–0001.

Agency Number: WH–3 and WH–3 Spanish.

Affected Public: Individuals or households; farms, business or other for profit; not-for-profit institutions; Federal

government; State, local or tribal government.

Total Respondents: 35,000.

Total Responses: 35,000.

Time per Response: 20 minutes.

Frequency: On occasion.

Estimated Total Burden Hours: 11,667.

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 will also become a matter of public record.

Dated: December 10, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–30969 Filed 12–15–03; 8:45 am]

BILLING CODE 4510–27–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2003–3]

Courier Mail

AGENCY: Copyright Office, Library of Congress.

ACTION: New procedure for courier deliveries.

SUMMARY: The Copyright Office is announcing the implementation of new procedures for deliveries made by non-government, in-person, commercial couriers or messengers. These procedures do not apply to deliveries made by U.S. government representatives or those made by large commercial carriers such as Federal Express or United Parcel Service.

EFFECTIVE DATE: December 29, 2003.

FOR FURTHER INFORMATION CONTACT: Melissa Dadant, Chief, Receiving and Processing Division. Telephone: (202) 707–7700. Telefax: (202) 707–1899. Tanya M. Sandros, Senior Attorney. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Beginning on December 29, 2003, the Library of Congress will no longer accept on site deliveries from non-governmental, in-person, commercial couriers or messengers. Instead, couriers must deliver materials for staff at the Library of Congress, including deliveries to Copyright Office employees, directly to the Congressional Courier Acceptance Site (''CCAS''), located on 2nd and D Streets, NE. The CCAS will accept items from couriers with proper identification, *e.g.*, a valid driver's license, Monday through Friday between 8:30 a.m. and 4 p.m. Short-term parking for both cars and bikes is available at the site. The date of receipt at the CCAS will be considered as the date materials would have been received at the Copyright Office but for the change in the Library's policy for accepting courier mail.

A courier may make a delivery of up to ten items to the CCAS at any one time. When a courier makes a delivery to the acceptance site, each item will be logged-in, noting date and time, x-rayed and screened for hazardous materials and substances. Packages no larger than 4″ × 14″ × 18″ will be accepted at the CCAS for processing on site. Larger packages delivered to the CCAS will be redirected to the Library of Congress' off-site mail processing center for inspection. Items will not be presorted and redirected based on their weight.

Expected deliveries from a source known to the recipient that arrive at the CCAS before 10 a.m. will be inspected and delivered to the appropriate office in the Library of Congress by the end of the day. All other deliveries will be delivered generally during the morning of the next business day. Expected deliveries are those which have been requested by a staff member of the Library from a sender known to the Library or a staff member, and which are delivered by an employee of a known organization, *i.e.*, one that is known by the Library and routinely conducts business with its staff, or by a courier company on its behalf.

These procedures do not apply to normal mail deliveries or deliveries from large commercial carriers such as Federal Express or United Parcel Service (''UPS''). Deliveries from these carriers will continue to be processed at the off-site mail facility.

Dated: December 12, 2003.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 03–31125 Filed 12–15–03; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 154]

Title VI of the Civil Rights Act of 1964, as Amended: Policy Guidance on the Prohibition Against National Origin Discrimination as It Affects Persons With Limited English Proficiency

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Policy guidance document.

SUMMARY: NASA adopts policy guidance to federal financial assistance recipients regarding Title VI prohibition against national origin discrimination affecting Limited English Proficient (LEP) persons. The NASA recipient LEP policy guidance is issued pursuant to Executive Order 13166 and supplants existing policy guidance on the same subject originally published at 66 FR 15141 (March 15, 2001).

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Mr. Miguel A. Torres, 202–358–0937, or TDD: 202–358–3748. Arrangements to receive the policy in an alternative format may be made by contacting Mr. Miguel A. Torres.

SUPPLEMENTARY INFORMATION: The purpose of this policy guidance is to further clarify the responsibilities of institutions and/or entities that receive financial assistance from NASA, and assist them in fulfilling their responsibilities to LEP persons pursuant to Title VI of the Civil Rights Act of 1964. The policy guidance emphasizes that in order to avoid discrimination against LEP persons on grounds of national origin, recipients of NASA financial assistance must take adequate steps to ensure that people who are not proficient in English can effectively participate in and benefit from the recipient's programs and activities. Therefore, LEP persons should expect to receive the language assistance necessary to afford them meaningful access to the recipients' programs and activities, free of charge.

This document was originally published as policy guidance for public comment on March 15, 2001. *See* 66 FR 15141. The document was based on the policy guidance issued by the Department of Justice entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency.'' 65 FR 50213 (August 16, 2000). No public comments were received.

On October 26, 2001, and January 11, 2002, the Assistant Attorney General for

Civil Rights issued to federal departments and agencies guidance memoranda, which reaffirmed the Department of Justice's commitment to ensuring that federally assisted programs and activities fulfill their LEP responsibilities and which clarified and answered certain questions raised regarding the August 16th publication. In addition, on March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients that was drafted and organized to also function as a model for similar guidance documents by other Federal grant agencies. *See* 67 FR 41455 (June 18, 2002). NASA reviewed its March 15, 2001, publication in light of the aforementioned clarifications, to determine whether there was a need to clarify or modify the March 15th policy guidance.

In furtherance of those memoranda, NASA republished revised policy guidance for additional public comment on August 15, 2003 (68 FR 48947), for the purpose of obtaining additional public comment. Because the guidance must adhere to the federal-wide compliance standards and framework detailed in the model DOJ LEP Guidance, NASA specifically solicited comments on the nature, scope and appropriateness of the NASA-specific examples set out in the revised guidance explaining and/or highlighting how those consistent federal-wide compliance standards are applicable to recipients of federal financial assistance through NASA. No public comments were received.

It has been determined that this guidance, which supplants existing guidance on the same subject previously published at 66 FR 15141 (March 15, 2001), does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. It also has been determined that this guidance is not subject to Executive Order 12866.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or LEP. While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English not well or not at all in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper Language Assistance Plan (LAP). However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria DOJ will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

There are many productive steps that NASA can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, NASA plans to continue to provide assistance and guidance in this important area. In addition, NASA plans to work with its recipients, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, NASA intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, and small non-profits. An interagency working group on LEP has developed a Web site, *http://www.lep.gov,* to assist in disseminating this information to recipients, federal agencies, and the communities being served.

Many commentators, responding to the proposed DOJ LEP Policy Guidance, noted that some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. The Department of Justice has taken the position that this is not the case, and NASA agrees with that position. Accordingly, NASA will strive to ensure that federally assisted programs and activities work in a way

[1] NASA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity to effectuate the provisions of [Section 601] by issuing rules, regulations, or orders of general applicability. 42 U.S.C. 2000d–1.

NASA regulations promulgated pursuant to Section 602 forbid recipients from utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as to individuals of a particular race, color, or national origin. 14 CFR 1250.103–2.

The Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of NASA, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau,* a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. Improving Access to Services for Persons with Limited English Proficiency, 65 FR 50121 (August 16, 2000). Under that Order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program. Title VI regulations also prohibit utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

On that same day, DOJ issued a general guidance document addressed to Executive Agency Civil Rights Officers setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency, 65 FR 50123 (August 16, 2000) (DOJ LEP Guidance). The DOJ role under Executive Order 13166 (the Executive Order) is unique. The Executive Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal Government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this guidance is designed to address.

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval,* 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for Heads of Departments and Agencies, General Counsels and Civil Rights Directors. This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of Sandoval.[3] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force.

Pursuant to Executive Order 13166, DOJ developed its own guidance document for recipients and initially issued it on January 16, 2001. Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 66 FR 3834 (January 16, 2001) (LEP Guidance for DOJ Recipients). NASA published in the **Federal Register** (66 FR 15141) its own LEP Guidance. NASA did not receive comments from the public.

This guidance document is thus published pursuant to Executive Order 13166 and supplants the March 15, 2001, publication.

III. Who Is Covered?

NASA regulations, 14 CFR Part 1250, require all recipients of federal financial assistance from NASA to provide meaningful access to LEP persons.[4] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of NASA assistance include, for example:

- State or local agencies
- Non-profit institutions or organizations
- Educational Institutions
- Any public or private individual to whom federal assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof.

Sub-recipients likewise are covered when federal funds are passed through from one recipient to a sub-recipient.

Coverage extends to a recipient's entire program or activity, *i.e.,* to all parts of a recipient's operations. This is true even if only one part of the recipient receives the federal assistance.[5]

[3] The memorandum noted that some commentators have interpreted Sandoval as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. *See, e.g., Sandoval,* 532 U.S. at 286, 286 n.6 (''[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations .* * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 when Sec. 601 permits the very behavior that the regulations forbid.'') The memorandum, however, made clear that DOJ disagreed with the commentator's interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations.

[4] Pursuant to Executive Order 13166, the meaningful access requirement of Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of federal agencies, including NASA.

[5] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of

Continued

Example: NASA provides assistance to a state department of education for curriculum enhancement in science and mathematics in its public schools. All of the operations of the entire state department of education—not just the schools—are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or LEP, entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by NASA recipients and should be considered when planning language services include, but are not limited to:

- Students enrolled in NASA-funded science, mathematics, and technology enrichment activities.
- Parents or family members of the above.
- Individuals participating in NASA program orientations and visiting exhibits at NASA Visitor centers where the programs and activities are funded and conducted by a NASA financial assistance recipient.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. NASA recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons eligible to be served, or likely to be directly affected, by a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. However, where, for instance, a school district receiving NASA financial assistance serves a large LEP population, the appropriate service area is most likely the school district, and not the entire state. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents are potential or actual participants or beneficiaries of NASA-funded programs and activities.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[6] Community agencies, school systems, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(1) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question.

compliance would be terminated. 42 U.S.C. 2000d–1.

[6] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(2) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate information on short and long-term weather patterns to rural communities via satellite pictures and computer modeling differ, for example, from those to provide curriculum enhancement in science and mathematics to middle school students. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by NASA recipients to make an activity compulsory, such as instruction on safety and security requirements before touring a NASA facility, can serve as strong evidence of the program's importance.

(3) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, reasonable steps may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be fixed later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[7] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the mix of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter interpretation) and written translation (hereinafter translation). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a visit by the NASA Administrator to a largely Hispanic neighborhood may need immediate oral interpreters available. (Of course, many community organizations may have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high, such as in the case of a voluntary general public tour of a NASA program site in which pre-arranged language services for the particular service may not be necessary.

[7] Small recipients with limited resources my find that entering into a bulk telephonic interpretation service will prove cost effective.

Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person,[8] and understand and follow

[8] Many languages have regionalisms, or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there

Continued

confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Some recipients, such as technical or scientific recipients, may have additional self-imposed requirements for interpreters. Where the technical integrity of the information depends on precise, complete, and accurate interpretation or translations, particularly in the contexts of communicating technology innovations to the public, the use of certified interpreters is strongly encouraged.[9] Where such activities are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate.

The quality and accuracy of language services is part of the appropriate mix of LEP services required. The quality and accuracy of language services during a safety and security briefing, for example, must be extraordinarily high, while the quality and accuracy of language services in responding to telephonic inquiries for general information need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for timely applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of NASA recipients which involve the provision of enrollment information to parents of potential student participants in NASA-funded enrichment activities in science, mathematics, and/or technology, a recipient would likely not be providing meaningful access if it had one bilingual member of the staff available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as public information specialists, guards, or program directors, with staff that are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual security guard would probably not be able to perform effectively the role of a planetary science interpreter and security guard at the same time, even if the security guard were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members or Friends as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important

may be languages that do not have an appropriate direct interpretation of some technical terms, the interpreter should be so aware of the issue. The interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language so that they can be used again, when appropriate.

[9] For those languages for which no formal accreditation or certification currently exists, NASA recipients should consider a formal process for establishing the credentials of the interpreter.

programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, or friend, acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), or friends, persons are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.*, sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community.[10] In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another person in certain matters. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For NASA recipient programs and activities, this is particularly true in situations in which health, safety, or security is at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when security guards respond to an illegal entry call. In such a case, use of family members or neighbors to interpret for the alleged perpetrator or witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), or friends, often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary, unescorted tour of artwork in a NASA facility open to the general public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family members, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information are critical, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should Be Translated? After applying the four-factor analysis, a recipient may determine that an effective Language Assistance Plan (LAP) for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Consent and complaint forms
- Written notices of rights, or discontinuation of programs and/or activities
- Notices advising LEP persons of free language assistance
- Security or safety brochures for visitors to NASA facilities
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is vital may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for participation in an after-school science and mathematics enrichment program could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are vital to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of meaningful access. Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with

[10] For example, special circumstances may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of persons other than qualified interpreters, particularly where technical information, an important right, benefit, service, or access to personal or law enforcement information is at stake. In some situations, individuals could potentially misuse information they obtained in interpreting for other persons. In addition to ensuring competency and accuracy of the interpretation, recipients should take these special circumstances into account when determining whether a person makes a knowing and voluntary choice to use another person to interpret, instead of an interpreter provided by the recipient.

other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents Be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They may serve LEP persons who speak many different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a safe harbor for recipients regarding the requirements for translation of written materials. A safe harbor means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The NASA recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, NASA-funded educational enrichment programs should, where appropriate, ensure that NASA safety and security rules have been explained to LEP participants, at orientation, for instance, prior to taking a tour of any NASA facility.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where scientific and other technical documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[11] Competence can often be ensured by having a second, independent translator check the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called Aback translation.

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[12] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly

[11] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[12] For instance, there may be languages which do not have an appropriate direct translation of some technical terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts.

used terms may be useful for LEP persons and translators, and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, of Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple for LEP persons who rely on them may use translators that are less skilled than important documents upon which reliance has important consequences (including, *e.g.*, information or documents of NASA recipients regarding certain security, health, and safety requirements.). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written LAP for LEP persons for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LAP, their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain NASA recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LAP. However, the absence of a written LAP does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing a LAP and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis.

(2) Language Assistance Measures

An effective LAP would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LAP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of a LAP. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once a recipient has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain NASA programs, activities and or facilities run by NASA recipients. For instance, signs in entry areas could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.
- Stating in outreach documents that language services are available from the NASA recipient. Announcements could

be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be placed on the front of common documents.

• Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.

• Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

• Including notices in local newspapers in languages other than English.

• Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.

• Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LAP

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LAP. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LAP is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

• Current LEP populations in service area or population affected or encountered.

• Frequency of encounters with LEP language groups.

• Nature and importance of activities to LEP persons.

• Availability of resources, including technological advances and sources of additional resources, and the costs imposed.

• Whether existing assistance is meeting the needs of LEP persons.

• Whether staff knows and understands the LAP and how to implement it.

• Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by NASA through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that NASA will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or NASA regulations.[13] If an investigation results in a finding of noncompliance, NASA will inform the recipient in writing of this determination, including the basis for the determination. NASA uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, NASA must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, NASA must secure compliance through the termination of federal assistance after the NASA recipient has been given an opportunity for an administrative hearing and/or by referring the matter to the DOJ to seek injunctive relief or pursue other enforcement proceedings. NASA engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, NASA proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, NASA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, NASA acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, NASA will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, NASA recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

Dorothy Hayden-Watkins,

Assistant Administrator for Equal Opportunity Programs.

[FR Doc. 03–30931 Filed 12–15–03; 8:45 am]

BILLING CODE 7510–01–P

[13] At educational institutions, investigations will be conducted by the U.S. Department of Education under a Memorandum of Understanding (MOU) between NASA and the U.S. Department of Education.

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission and to update and correct the last Notice published on August 26, 2002.

EFFECTIVE DATE: This notice is effective upon date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Frances Fragua, Office of General Counsel at the National Indian Gaming Commission, 202/632–7003, or by facsimile at 202/632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)) requires the Commission to publish, in the **Federal Register,** approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigation and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission (Attention: Legal Staff Assistant), 1441 L Street, NW., Suite 9100, Washington, DC 20005.

On August 26, 2002, the Commission published a list of tribes for which the Chairman had previously approved tribal gaming ordinances authorizing class III gaming. It was later discovered that this list was incomplete. Therefore, the following list of tribes constitutes an update and correction to the notice published on August 26, 2002.

1. Apache Tribe of Oklahoma
2. Auberry Big Sandy Rancheria
3. California Valley Miwok Tribe (FKA Sheep Ranch Tribe of We-Wuk Indians)
4. Fort Belknap Indian Community
5. Karuk Tribe of California
6. Manchester Band of Pomo Indians
7. Match-E-Be-She-Wish Band of Pottawatomi Indians
8. Otoe-Missouri Tribe of Oklahoma
9. Seneca-Cayuga Tribe of Oklahoma
10. Seneca Nation of Indians of New York
11. Shawnee Tribe of Oklahoma
12. Viejas Band of Mission Indians
13. Wichita and Affiliated Tribes of Oklahoma

Philip N. Hogen,

Chairman, National Indian Gaming Commission.

[FR Doc. 03–30949 Filed 12–15–03; 8:45 am]

BILLING CODE 7545–02–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Small Business Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Small Business Industrial Innovation (SBIR)—(61).

Date and Time: January 7, 2004, 2 p.m.–6 p.m.

Type of Meeting: Open.

Place: Wyndham Anatole Hotel, Dallas, TX. DMII National Conference.

Contact Person: Kesh Narayanan, Director, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation (703) 292–7076, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Minutes: May be obtained from the contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning research programs pertaining to the small business community.

Agenda: January 7, 2004,
2 p.m.—Welcome
2:15 p.m.—Introductions
2:30 p.m.—SBIR/STTR Program Overview
5:15 p.m.—Open Discussion
6 p.m.—Adjourn

Dated: December 11, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–31012 Filed 12–15–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–3]

Notice of Issuance of Amendment to Materials License No. SNM–2502; Carolina Power & Light Company, H.B. Robinson Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 13 to Materials License SNM–2502 held by Carolina Power & Light Company (CP&L) for the receipt, possession, transfer, and storage of spent fuel at the H.B. Robinson Independent Spent Fuel Storage Installation (ISFSI), located in Darlington County, South Carolina. The amendment is effective as of the date of issuance.

By application dated September 3, 2003, CP&L requested an amendment to Materials License SNM–2502 for the H.B. Robinson ISFSI to make editorial changes to the technical specifications. The request involved changing the drawing numbers referenced in section 5 of Appendix A of the technical specifications from the original ISFSI vendor's numbers to the H.B. Robinson plant's numbers used for drawing control. The requested changes do not affect the design, operation, or surveillance of the ISFSI.

This amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment meets the criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(10) of the regulations. Therefore, an environmental assessment need not be prepared in connection with issuance of the amendment.

The request for amendment was docketed under 10 CFR part 72, Docket 72–3. For further details with respect to this action, see the amendment request dated September 3, 2003, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML032510880. The NRC maintains 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 email to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 9th day of December, 2003.

For the Nuclear Regulatory Commission.

James Randall Hall,

Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–30958 Filed 12–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–425]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on November 18, 2003 (68 FR 65092), that corrects the 30-day date for hearing request.

FOR FURTHER INFORMATION CONTACT: Frank Rinaldi, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1447, e-mail: *FXR2@NRC.GOV.*

SUPPLEMENTARY INFORMATION: On page 65093, in the first column, in the third complete paragraph, first line, it is corrected to read from ''December 2, 2003'' to ''December 18, 2003''.

Dated in Rockville, Maryland, this 9th day of December, 2003.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30959 Filed 12–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company; Surry Power Station, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License Nos. DPR–32 and DPR–37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia. As required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow the licensee to correct various administrative and editorial errors to the Surry Technical Specifications (TS) in accordance with the licensee's application dated December 19, 2002, as supplemented by letter dated October 20, 2003.

The Need for the Proposed Action

The proposed action corrects administrative and editorial errors to the Surry TS.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the proposed changes to the Surry TS.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Surry Power Station, Unit Nos. 1 and 2, dated May 1972 and June 1972, respectively.

Agencies and Persons Consulted

On November 21, 2003, the staff consulted with the Virginia State official, Mr. Les Foldesi of the Virginia Department of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 19, 2002, as supplemented by letter dated October 20, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 9th day of December, 2003.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30960 Filed 12–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Weeks of December 15, 22, 29, 2003, January 5, 12, 19, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 15, 2003

Tuesday, December 16, 2003

9:30 a.m. Discussion of Security Issues (closed—ex. 1).

Week of December 22, 2003—Tentative

There are no meetings scheduled for the Week of December 22, 2003.

Week of December 29, 2003—Tentative

There are no meetings scheduled for the Week of December 29, 2003.

Week of January 5, 2004—Tentative

There are no meetings scheduled for the Week of January 5, 2004.

Week of January 12, 2004—Tentative

Wednesday, January 14, 2004

9:30 a.m. Briefing on Status of Office of Chief Information Officer Programs, Performance, and Plans (Public Meeting). (Contact: Jacqueline Silber, (301) 415–7330.)

This meeting will be webcast live at the Web address *http://www.nrc.gov.*

Week of January 19, 2004—Tentative

There are no meetings scheduled for the Week of January 19, 2004.

* 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: Timothy J. Frye, (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 3–0 on December 9, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that ''Affirmation of Duke Energy Corporation (McGuire Nuclear Station, Units 1 & 2, Catawba Nuclear Station Units 1 & 2) Petition for Review of LBP–03–17'' be held on December 9, and on less than one week's notice to the public.

* * * * *

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: December 11, 2003.

Timothy J. Frye,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–31081 Filed 12–12–03; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:

Rules 8b–1 to 8b–32; SEC File No. 270–135; OMB Control No. 3235–0176.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rules Under Section 8(b) of the Investment Company Act of 1940

Rules 8b–1 to 8b–32 (17 CFR 270.8b–1 to 8b–32) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act'') are the procedural rules an investment company must follow when preparing and filing a registration statement. These rules were adopted to standardize the mechanics of registration under the Act and to provide more specific guidance for persons registering under the Act than the information contained in the statute. For the most part, these procedural rules do not require the disclosure of information. Two of the rules, however, require limited disclosure of information.[1] The information required by the rules is necessary to ensure that investors have clear and complete information upon which to base an investment decision. The Commission uses the information that investment companies provide on registration statements in its regulatory, disclosure review, inspection and policy-making roles. The respondents to the collection of information are investment companies filing registration statements under the Act.

The Commission does not estimate separately the total annual reporting and recordkeeping burden associated with rules 8b–1 to 8b–32 because the burden associated with these rules are included in the burden estimates the Commission submits for the investment company registration statement forms (*e.g.,* Form N–1A, Form N–2, Form N–3, and Form N–4). For example, a mutual fund that prepares a registration statement on Form N–1A must comply with the rules under section 8(b), including rules on riders, amendments, the form of the registration statement, and the number of copies to be submitted. Because the fund only incurs a burden from the section 8(b) rules when preparing a registration statement, it would be impractical to measure the compliance burden of these rules separately. The Commission believes that including the burden of the section 8(b) rules with the burden estimates for the investment company registration statement forms provides a more accurate and complete estimate of the total burdens associated with the registration process.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

[1] Rule 8b–3 (17 CFR 270.8b–3) provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22 (17 CFR 270.8b–22) provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control.

techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: December 9, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30937 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–26286; 811–78332]

Bexil Corporation; Notice of Application

December 10, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for deregistration under section 8(f) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Bexil Corporation requests an order declaring that it has ceased to be an investment company.

Applicant: Bexil Corporation.

Filing Dates: The application was filed on April 8, 2002, and amended on December 5, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 5, 2004, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Stephanie A. Djinis, Law Offices of Stephanie A. Djinis, 1749 Old Meadow Road, Suite 310, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Todd F. Kuehl, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations:

1. From 1986 through 1996, applicant's predecessor operated as a diversified series of shares of Bull & Bear Funds II, Inc., an open-end management investment company organized in 1974 under the laws of the State of Maryland and registered under the Act. Applicant was incorporated under the laws of the State of Maryland as Bull & Bear U.S. Government Securities Fund, Inc. on August 30, 1996. On September 27, 1996, applicant registered under the Act as a closed-end management investment company. Applicant changed its name to Bexil Corporation on August 26, 1999. On November 28, 2000, applicant's stockholders approved a proposal to change the nature of applicant's business so as to cease to be an investment company and become an operating company. On June 13, 2001, applicant's board of directors (the ''Board'') terminated its management contract with an outside investment adviser effective July 31, 2001, and authorized applicant's officers to manage applicant's business affairs.

2. On January 18, 2002, applicant acquired 50% of the outstanding voting stock of York Insurance Services Group, Inc. (''York''), a newly formed Delaware corporation. On that same date, York purchased all of the outstanding stock of certain subsidiaries of AIG Insurance Services, Inc. (''AIGIS''), a Delaware corporation. These subsidiaries have served as independent adjustment companies and third party administrators providing claims, data, and risk related services to insurers, insureds, and intermediaries located throughout the United States. Applicant states that York is not an investment company as defined in section 3(a) of the Act.

3. Mr. Thomas MacArthur (''MacArthur''), York's chairman and chief executive officer, owns the remaining 50% of York's outstanding stock. Pursuant to a stockholder's agreement among MacArthur, York and the applicant, York's board of directors consists of five members; each of MacArthur and the applicant has the right to nominate two members and AIGIS has the right to nominate one member.[1] Through a voting agreement among York, MacArthur and the applicant (''Voting Agreement''), applicant states that it has control over 50% of York's board of directors.[2] Two members of applicant's Board currently serve as members of York's board of directors. Applicant's president currently serves as York's vice-chairman. Applicant states that it substantially contributes to the management of York's lines of business expansion or contraction, executive compensation and human resources, internal audit, accounting and auditing, budgeting and capital expenditures, legal capitalization structure and related uses of debt and equity financing and mergers and acquisition activity. Applicant also states that it sets the compensation of all York officers, other than MacArthur, through its control over the compensation committee of York's board of directors. At June 30, 2003, applicant's interest in York represented approximately 98% of applicant's total assets on an unconsolidated basis (exclusive of Government securities and cash items).

Applicant's Legal Analysis:

1. Section 8(f) of the Act provides that whenever the Commission, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the Commission shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(a)(1)(A) of the Act defines an investment company as any issuer which ''is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities.'' Section 3(a)(1)(C) of the Act defines an investment company as any issuer which ''is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the

[1] York's bylaws provide that directors shall be nominated by a plurality of votes, except that any election of the individual nominated by AIGIS shall require a unanimous vote. All of AIGIS' rights with respect to directorships of York terminate at such time as the principal amount of a subordinated note dated January 18, 2002, of York payable to AIGIS shall be paid in full.

[2] The Voting Agreement requires that MacArthur vote his shares in favor of the AIGIS nominee, and that MacArthur will not vote for any individual to fill the vacancy left by an AIGIS nominee. The Voting Agreement contains no similar provision regarding the applicant's voting shares in York.

value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.'' Section 3(a)(2) of the Act defines investment securities as ''all securities except (a) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c).'' Section 2(a)(24) of the Act defines majority-owned subsidiary of a person as ''a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.'' Applicant states that it is no longer an investment company as defined in section 3(a)(1)(A) or section 3(a)(1)(C). Applicant states that it is actively engaged in the business of overseeing its York subsidiary's provision of claims, data, and risk related services to insurers, insureds, and intermediaries located throughout the United States, and that applicant is also actively engaged in conducting a business review, development, and acquisition program for other operating businesses.

3. Applicant states that it no longer meets the definition of investment company under the Act, and that it is thus qualified for an order of the Commission pursuant to section 8(f) of the Act. Applicant states that after entry of the order requested by the application, it will continue to be a publicly-held company listed on the American Stock Exchange and will continue to be subject to the reporting and other requirements of the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30985 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–10–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48898; File No. SR–Amex–2003–98]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by American Stock Exchange LLC Relating to Trust Certificates Linked to a Basket of Investment Grade Fixed Income Securities

December 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under section 107A of the Amex Company Guide (''Company Guide''), trust certificates linked to a basket of investment grade fixed income debt instruments.

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under section 107A of the Amex Company Guide, the ABS Securities. The Exchange proposed to list and trade under section 107A of the Company Guide, asset-backed securities (''ABS Securities'') representing ownership interests in the IndexPlus Trust Series 2003–1 (''Trust''), a special purpose trust to be formed by Merrill Lynch Depositor, Inc. (''MLD''),[4] and the trustee of the Trust pursuant to a trust agreement, which will be entered into on the date that the ABS Securities are issued. The assets of the Trust will consist primarily of a basket or portfolio of up to approximately twenty-five (25) investment-grade-fixed-income securities (''Underlying Corporate Bonds'') and United States Department of Treasury STRIPS or securities issued by the United States Department of the Treasury (''Treasury Securities''). In the aggregate, the component securities of the basket or portfolio will be referred to as the ''Underlying Securities.''

The ABS Securities will conform to the initial listing guidelines under section 107A[5] and continued listing guidelines under sections 1001–1003[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] Merrill Lynch Depositor, Inc. is a wholly-owned special purpose entity of Merrill Lynch, Pierce, Fenner & Smith Incorporated and the registrant under the Form S–3 Registration Statement (No. 333–88166) under which the securities will be issued.

[5] The initial listing standards for the ABS Securities require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in section 101 of the Company Guide, the Exchange pursuant to section 107A of the Company Guide will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[6] The Exchange's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the ABS Securities, the Exchange will rely on the guidelines for bonds in section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate

Continued

of the Company Guide. At the time of issuance, the ABS Securities will receive an investment grade rating from a nationally recognized securities rating organization (''NRSRO''). The issuance of the ABS Securities will be a repackaging of the Underlying Corporate Bonds together with the addition of Treasury Securities and the obligation of the Trust to make distributions to holders of the ABS Securities depending on the amount of distributions received by the Trust on the Underlying Securities.

However, due to the pass-through and passive nature of the ABS Securities, the Exchange intends to rely on the assets and stockholder equity of the issuers of the Underlying Corporate Bonds, rather than the Trust to meet the requirement in section 107A of the Company Guide. The corporate issuers of the Underlying Corporate Bonds will meet or exceed the requirements of section 107A of the Company Guide. The distribution and principal amount/aggregate market value requirements found in section 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. In addition, the Exchange for purposes of including Treasury Securities will rely on the fact that the issuer is the United States government rather than the asset and stockholder tests found in section 107A.

The basket of Underlying Securities will not be managed and will generally remain static over the term of the ABS Securities. Each of the Underlying Securities provides for the payment of interest on a semi-annual basis and the ABS Securities will also provide for interest distributions on a semi-annual basis. The Treasury Securities will not make periodic payments of interest.[7] To alleviate cash flow timing issues, the Trust will deposit interest payments it receives between distribution dates in a non-interest bearing account to be held until such funds are distributed on the subsequent semi-annual distribution date. Principal distributions on the ABS Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Securities, (*i.e.*, the Underlying Corporate Bonds and Treasury Securities). However, some of the Underlying Securities may have redemption provisions and in the event of an early redemption or other liquidation (*e.g.*, upon an event of default) of the Underlying Securities, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation will be distributed pro rata to the holders of the ABS Securities. Each Underlying Corporate Bond will be investment grade and issued by a corporate issuer and purchased in the secondary market.

In the case of Treasury Securities, the Trust will either purchase the securities directly from primary dealers or in the secondary market, which consists of primary dealers, non-primary dealers, customers, financial institutions, non-financial institutions and individuals.

Holders of the ABS Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the ABS Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Securities. Distributions of interest will be made semi-annually. Investors will also be entitled to be repaid the principal of their ABS Securities from the proceeds of the principal payments on the Underlying Securities.[8] The payout or return to investors on the ABS Securities will not be leveraged.

The ABS Securities will mature on the latest maturity date of the Underlying Securities. Holders of the ABS Securities will have no direct ability to exercise any of the rights of a holder of an Underlying Corporate Bond; however, holders of the ABS Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Securities.

The proposed ABS Securities are substantially similar to various Select Note Trust securities currently listed and traded on the Exchange.[9] The instant ABS Securities as compared to the Select Note Trust issuances have the following differences: (1) the actual Underlying Securities in the basket of investment-grade-fixed income securities, (2) a par value of $25 instead of $1000, and (3) the lack of an Interest Distribution Agreement. Accordingly, the Exchange proposes to provide for the listing and trading of the ABS Securities where the Underlying Securities meet the Exchange's Bond and Debenture Listing Standards set forth in section 104 of the Amex Company Guide. The Exchange represents that all of the Underlying Securities in the proposed basket will meet or exceed these listing standards.

The Exchange's Bond and Debenture Listing Standards in section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange (''NYSE'' or on the Nasdaq National Market (''Nasdaq'')); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq) has guaranteed the debt security; (4) an NRSRO has assigned a current rating to the debt security that is no lower than an S&P Corporation (''S&P'') ''B'' rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a S&P ''B'' rating or an equivalent rating by another NRSRO to a pari passu or junior issue.

In addition to the Exchange's Bond and Debenture Listing Standards, an Underlying Security must also be of investment grade quality as rated by an NRSRO and at least 75% of the underlying basket is required to contain Underlying Securities from issuances of $100 million or more. The maturity of each Underlying Security is expected to match the payment of principal of the ABS Securities with the maturity date of the ABS Securities being the latest maturity date of the Underlying Securities. Amortization of the ABS

market value or the principal amount of bonds publicly held is less than $400,000.

[7] A stripped fixed income security, such as a Treasury Security, is a security that is separated into its periodic interest payments and principal repayment. The separate strips are then sold individually as zero coupon securities providing investors with a wide choice of alternative maturities.

[8] The Underlying Securities may drop out of the basket upon maturity, redemption or upon payment default or acceleration of the maturity date for any default other than payment default, or if an Underlying Security that constitutes 10% or more of the assets of the Trust ceases to file periodic reports with the Securities and Exchange Commission under the Securities Exchange Act of 1934. *See* prospectus for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Security and for a description of payment default and acceleration of the maturity date.

[9] *See* Securities Exchange Act Release Nos. 48791 (November 17, 2003), 68 FR 65750 (November 21, 2003) (SR–Amex–2003–92); 48312 (August 8, 2003), 68 FR 48970 (August 15, 2003) (SR–Amex–2003–69); 47884 (May 16, 2003), 68 FR 28305 (May 23, 2003) (SR–Amex–2003–37); 47730 (April 24, 2003), 68 FR 23340 (May 1, 2003) (SR–Amex–2003–25); 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (SR–Amex–2002–92); and 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002) (SR–Amex–2002–70).

Securities will be based on (1) the respective maturities of the Underlying Securities, including Treasury Securities, (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Securities, and (3) any early redemption or liquidation of the Underlying Securities, including Treasury Securities.

Investors will be able to obtain the prices for the Underlying Securities through Bloomberg L.P. or other market vendors, including the broker-dealer through whom the investor purchased the ABS Securities.[10] In addition, The Bond Market Association (''TBMA'') provides links to price and other bond information sources on its investor Web site at *http://www.investinginbonds.com.* Transaction prices and volume data for the most actively traded bonds on the exchanges are also published daily in newspapers and on a variety of financial Web sites. The National Association of Securities Dealers, Inc. (''NASD'') Trade Reporting and Compliance Engine (''TRACE'') will also help investors obtain transaction information for most corporate debt securities, such as investment grade corporate bonds.[11] For a fee, investors can have access to intra-day bellwether quotes.[12]

Price and transaction information for Treasury Securities may also be obtained at *http://publicdebt.treas.gov.* Price quotes are also available to investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices [13] and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The ABS Securities will be listed in $25 denominations with the Exchange's existing equity floor trading rules applying to trading. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the ABS Securities.[14] Second, the ABS Securities will be subject to the equity margin rules of the Exchange.[15] Third, the Exchange will, prior to trading the ABS Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the ABS Securities and highlighting the special risks and characteristics of the ABS Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the ABS Securities: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the ABS Securities. Specifically, the Amex will rely on its existing surveillance procedures governing equity, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act [16] in general and furthers the objectives of section 6(b)(5)[17] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–98. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2003–98 and should be submitted by January 6, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[18] The Commission finds that this proposal is similar to several approved asset-backed trust certificates currently listed and traded on the Amex.[19] Accordingly, the Commission finds that the listing and trading of ABS Securities is consistent

[10] The prices of Underlying Securities generally will be determined by one or more market makers in accordance with applicable law and Exchange's rules.

[11] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/.*

[12] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/.*

[13] ''Valuation Prices'' refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

[14] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[15] *See* Amex Rule 462.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] *See supra* note 9.

with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[20]

As described more fully above, the ABS Securities are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds together with the addition of Treasury Securities, subject to certain distribution of interest obligations of the Trust. The ABS Securities are not leveraged instruments. The ABS Securities are debt instruments whose price will still be derived and based upon the value of the Underlying Securities. The Exchange represents that the value of the Underlying Securities will be determined by one or more market makers, in accordance with the Exchange rules. Investors are guaranteed, subject to certain conditions, at least the principal amount that they paid for the Underlying Securities.[21] In addition, each of the Underlying Corporate Bonds will pay interest on a semi-annual basis and thus the ABS Securities themselves will also pay interest on a semi-annual basis. To alleviate cash flow timing issues, the Trust will deposit any interest payments it receives between distribution dates in a non-interest bearing account to be held until such funds are distributed on the subsequent semi-annual distribution date. The Treasury Securities will not make periodic payments of interest.[22] In addition, the ABS Securities will mature on the latest maturity date of the Underlying Securities.[23] However, due to the pass-through nature of the ABS Securities, the level of risk involved in the purchase or sale of the ABS Securities is similar to the risk involved in the purchase or sale of traditional common stock.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the ABS Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the ABS Securities. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securities. In addition, the Exchange's ''Other Securities'' listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.[24] The Commission notes that the Exchange has represented that the ABS Securities will be listed in $25 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.[25]

Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under section 107A and continued listing guidelines under sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities meet the Exchange's section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the U.S. government rather than the asset and stockholder tests found in section 107A), the Underlying Securities will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of ''B'' or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of $100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market venders such as Bloomberg, L.P., or though Web sites such as *http://www.investinginbonds.com* and *http://publicdebt.treas.gov* for Treasury Securities.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other asset-backed instruments currently listed and traded on the Amex.[26] The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act [27] to approve the proposal on an accelerated basis.

V. Conclusion

Is it therefore ordered, pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change (SR-Amex-2003–98) is hereby approved on an accelerated basis.

[20] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *See supra* note 8.

[22] *See supra* note 7.

[23] *See supra* note 8.

[24] *See* Company Guide section 107A.

[25] The ABS Securities will be registered under section 12 of the Act.

[26] See supra note 9.

[27] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[28] 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30988 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48885; File No. SR–DTC–2002–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Elimination of Matching Criteria for DRS Transactions

December 5 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 11, 2002, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides for a processing enhancement to the Profile Modification System (''Profile'') of the Direct Registration System (''DRS'') by eliminating the matching criteria for the investor's account registration for certain DRS transactions using Profile.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance Profile processing by eliminating investor's account registration information[3] as a matching criteria for certain DRS transactions processed through Profile. Implemented by DTC in May 2000, Profile provides an electronic means for both participants and DRS limited participants (*i.e.,* transfer agents) to convey an investor's request to move from one form of securities ownership to another with the actual position movements taking place in DRS.[4] Currently the investor's social security number (''SS'') or taxpayer identification number (''TIN''), DRS account number, CUSIP, share quantity to be moved through Profile, and the account registration information are used by participants and DRS limited participants as matching criteria when processing DRS transactions through Profile. DTC will eliminate the use of the account registration information as a matching criteria for certain DRS transactions processed through Profile in order to increase processing efficiencies. For those transactions where the investor's SS or TIN is available, participants and limited participants will be required to use the SS or TIN, CUSIP, DRS account number, and share quantity as matching criteria to process DRS transactions through Profile. In the event an investor's SS or TIN is not available, the registration, in addition to the other criteria, will continue to be required as matching criteria.

DTC's Profile System will be enhanced to accommodate the registration elimination for incoming and outgoing files. The following rules will apply to Profile transactions submitted by participants and DRS limited participants:

- For Profile transactions where the participant or limited participant inputs the investor's SS or TIN, DTC will no longer require registration information. DTC will not forward the registration information to the party receiving the Profile instruction.
- The registration information will be required when a participant or DRS limited participant does not know the investor's SS or TIN or that information is not available. Participants and DRS limited participants will be required to input nine ''1s'' if the SS or TIN is not known or input nine ''9s'' if the SS or TIN is not available (as in the case of a foreign investor) and to input the investor's registration as it appears on the investor's DRS statement. DTC will forward the registration information to the party receiving the Profile instruction.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to DTC because the proposed rule change will provide for more efficient use of DRS by participants and DRS limited participants. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control for which it is responsible since the operation of DRS, as modified by the proposed rule change, will be similar to the current operation of DRS.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[6] of the Act and Rule 19b–4(f)(4)[7] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. At

[29] 17 CFR.200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Account registration information generally includes, but is not limited to, the investor's name, designation (*i.e.,* title), and form of ownership.

[4] Profile allows a broker-dealer to electronically submit an instruction to a transfer agent to move an investor's securities held in DRS at the transfer agent to the investor's account at the broker-dealer and allows a transfer agent to submit an instruction to a broker-dealer to move securities held in the investor's account at the broker-dealer to the investor's DRS account at the transfer agent.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

any time within sixty days of the filing of such proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–DTC–2002–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html.* All submissions should refer to File No. SR–DTC–2002–17 and should be submitted by January 6, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30938 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48892; File No. SR–ISE–2003–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. Relating to Firm Quotations

December 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The ISE submitted Amendment No. 1 to the proposed rule change on December 3, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its rules governing firm quotations. The text of the proposed rule change is available at the Office of the Secretary, ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2003. In Amendment No. 1, ISE corrects an error in the second sentence of the rule text of the original filing. Specifically, Amendment No. 1 deletes the reference to ''Order Execution Size''—a term no longer used in the rule—and substitutes the term ''a bid or offer.''

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to require ISE market makers to be firm for the stated size of their quotations in all instances. Earlier this year, the Exchange moved to ''one size'' for market maker quotations.[4] As now in effect, a market maker's disseminated quotation is firm at its stated size for all incoming orders. However, there currently is one exception to the ''one size'' rule: when quotes of two ISE market makers interact, a market maker can limit its exposure to one contract, regardless of the size of its disseminated quotation. This proposed rule change will remove that exception.

The ISE originally proposed the limited exception to the one-size rule to help limit market makers' risk during the transition to one size. Because quotations often change across multiple series in an options class, a market maker could be at risk when multiple quotes ''hit'' the quotes of other market makers and multiple trades occur. At the time the ISE moved to one size, the Commission granted the ISE an exemption from the firm quote rule [5] to permit market makers to limit their exposure in this limited situation.[6] ISE market makers have now operated under the one-size rule for almost a year, and have grown increasingly comfortable with the rule. As a general matter, both the ISE and its market makers believe that all market maker quotations should be firm for the full size in all situations. Thus, the ISE proposes to eliminate the current exception.

2. Statutory Basis

The ISE states that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act,[7] that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The ISE states that, in particular, the proposed rule change will further the development of the national market system by having ISE market makers be

[4] *See* Securities Exchange Act Release No. 47220 (January 21, 2003), 68 FR 4260 (January 28, 2003).

[5] 17 CFR 240.11Ac1–1.

[6] *See* letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated January 21, 2003.

[7] 15 U.S.C. 78f(b)(5).

fully compliant with Commission Rule 11Ac1–1 under the Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–ISE–2003–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, your comments should be sent in hardcopy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–34 and should be submitted by January 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30986 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 240.11Ac1–1.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48897; File No. SR–NASD–2003–104]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed New Uniform Definition of ''Branch Office'' Under NASD Rule 3010(g)(2)

December 9, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 2, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. On October 21, 2003, NASD amended the proposed rule change.[3] On December 8, 2003, NASD amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD filed the proposed rule change with the Commission (1) to amend NASD Rule 3010(g)(2) to revise the definition of the term ''branch office'; and (2) to adopt IM–3010–1 to provide guidance on factors to be considered by a member firm in conducting internal inspections of offices. NASD represents that the purpose of the proposed rule change is to facilitate the creation of a branch office registration system through the Central Registration Depository (''CRD'')® to provide a more efficient, centralized method for members and associated persons to register branch office locations as required by the rules and regulations of states and self-regulatory organizations, including NASD. NASD expects centralized registration of such locations would provide efficiency, clarity, and costs savings to members. NASD believes that the creation of a uniform registration system for branch offices through CRD® also would allow NASD and other securities regulators to effectively examine such locations to further investor protections.

In addition, NASD represents that the proposed rule change is part of NASD's rule modernization initiative to streamline and update NASD Rules while preserving investor protections. The proposed definition establishes a broader national standard and is the product of a coordinated effort among regulators to reduce inconsistencies in the definitions used by the Commission, NASD, the NYSE, and state securities regulators in identifying locations where broker/dealers conduct securities or investment banking business. The proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

3000. Responsibilites Relating to Associated Persons, Employees, and Others' Employees

3010. Supervision

(a) through (f) No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 21, 2003 (''Amendment No. 1''). In Amendment No. 1, NASD restated the proposed rule change in its entirety.

[4] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated December 8, 2003 (''Amendment No. 2''). In Amendment No. 2, NASD revised the proposed rule change (i) to insert the word ''associated'' into subparagraph (g)(2)(B)(i) of Rule 3010; (ii) to correct a cross-reference in subparagraph (g)(2)(C) of Rule 3010; and (iii) to correct punctuation in subparagraph (g)(3) of Rule 3010. In addition, in Amendment No. 2, NASD revised the discussion of the purpose of the proposed rule change (i) to remove a discussion regarding the Economic Advisory Board and references thereto, and (ii) to clarify a statement regarding the ''branch office'' definition proposed by The New York Stock Exchange (the ''NYSE'') and its position with respect to such definition.

(g) Definitions

(1) No Change.

(2) [''Branch Office'' means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:]

[(A) any location identified in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised;]

[(B) any location referred to in a member advertisement, as this term is defined in Rule 2210, by its local telephone number and/or local post office box provided that such reference may not contain the address of the non-branch location and, further, that such reference also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch location are directly supervised; or]

[(C) any location identified by address in a member's sales literature, as this term is defined in Rule 2210, provided that the sales literature also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised.]

[(D) any location where a person conducts business on behalf of the member occasionally and exclusively by appointment for the convenience of customers, so long as each customer is provided with the address and telephone number of the branch office or OSJ of the firm from which the person conducting business at the non-branch location is directly supervised.]

A ''branch office'' is any location where one or more associated persons of a member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such, excluding:

(A) Any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(B) Any location that is the associated person's primary residence; provided that

(i) Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

(ii) The location is not held out to the public as an office and the associated person does not meet with customers at the location;

(iii) Neither customer funds nor securities are handled at that location;

(iv) The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person;

(v) The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3010;

(vi) Electronic communications (e.g., e-mail) are made through the member's electronic system;

(vii) All orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

(viii) Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and

(ix) A list of the residence locations are maintained by the member;

(C) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with the provisions of paragraph (B)(ii) through (viii) above;

*(D) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;**

(E) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; or

(F) The Floor of a registered national securities exchange where a member conducts a direct access business with public customers; and

(G) A temporary location established in response to the implementation of a business continuity plan.

The term ''business day'' as used in Rule 3010(g)(2) shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

[(3) A member may substitute a central office address and telephone number for the supervisory branch office or OSJ locations referred to in paragraph (g)(2) above provided it can demonstrate to the Association's District Office having jurisdiction over the member that it has in place a significant and geographically dispersed supervisory system appropriate to its business and that any investor complaint received at the central site is provided to and resolved in conjunction with the office or offices with responsibility over the non-branch business location involved in the complaint.]

IM–3010–1—Standards for Reasonable Review

In fulfilling its obligations pursuant to Rule 3010(c), each member must conduct a review, at least annually, of the businesses in which it engages, which review must be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with NASD Rules. Each member shall establish and maintain supervisory procedures that must take into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, the disciplinary history of registered representatives or associated persons, etc. The procedures established and the reviews conducted must provide that the quality of supervision at remote offices is sufficient to assure compliance with applicable securities laws and regulations and with NASD Rules. With respect to a non-branch location where a registered representative engages in securities activities, a member must be especially diligent in establishing procedures and conducting reasonable reviews. Based on the factors outlined above, members may need to impose reasonably designed supervisory procedures for certain locations and/or

* *Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules, and regulations and applicable rules and regulations of NASD, other self-regulatory organizations, and securities or banking regulators may be displayed and shall not be deemed ''holding out'' for purposes of this section.*

may need to provide for more frequent reviews of certain locations.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

While NASD believes that its current branch office definition effectively meets its regulatory objectives, NASD appreciates that a uniform branch office definition would create a broader national standard that would minimize compliance burdens for members. Adoption of the proposed branch office definition by NASD and state securities administrators would facilitate the creation of a centralized branch office registration system through the CRD®, and provide efficiency, clarity, and costs savings to members.

Currently, there is no uniform approach among regulators for classifying locations from which registered representatives regularly conduct the business of effecting transactions in securities. The Commission, the NYSE, and state securities regulators all define the term ''branch office'' (or similar term) differently; and the term has different significance based on who classifies it. As a result, a member must comply with multiple definitions in each jurisdiction in which it conducts a securities business. This requires tracking numerous definitions, filing multiple forms to register and/or renew registration of such locations, meeting various deadlines, and continually monitoring each jurisdiction for changes in rules or procedures.

NASD member firms are currently required to complete Schedule E to the Form BD (''Schedule E'') to register or report branch offices to the Commission, NASD, and with particular state(s) in which they conduct a securities business that requires branch office registration. While Schedule E does capture certain data with respect to branch offices, NASD represents that both its staff and state regulators believe that Schedule E does not adequately fulfill their regulatory needs. For example, Schedule E does not link an individual registered representative with a particular branch office; this can make it difficult for state regulators to track down individual persons during examinations. In addition, member firms have said that Schedule E is a burdensome and time-consuming method by which to register branch offices. Since numerous states have varying branch office definitions, members must understand and comply with the requirements in each individual state. Further, updates or amendments to Schedule E do not update or amend an individual registered representative's Form U–4. Currently, a firm must amend these forms separately and there is no method to alert firms or regulators if the information on the two forms differs. NASD believes that the proposed branch office registration system through CRD'' would alleviate most, if not all, of these concerns.

As a result, NASD has been working with the North American Securities Administrators Association (''NASAA''), and the NYSE to reduce the inconsistencies that currently exist among the various ways in which locations are defined in order to increase the utility of CRD'' as a central branch office registration system for NASD, other self-regulatory organizations, and states. NASD staff has held numerous meetings with other regulators over the past three years with the purpose of achieving this goal. NASD represents that these meetings ultimately proved successful as the parties have reached agreement on a core proposed uniform definition which largely tracks the Commission's definition of ''office'' in the books and records rules, Rule 17a–3 and Rule 17a–4 (the ''Books and Records Rules'') under the Act.[5]

The proposed definition would contain several exceptions from branch office registration. The single difference to a common definition among regulators concerns the registration of certain primary residences as branch offices ''NASD and NASAA support a primary residence exception that provides for limitations on the activities (*e.g.*, no holding out of the residence as a place to conduct securities business, and no handling of funds or securities at the location), that can be performed at a primary residence without triggering branch office registration. The NYSE, however, believes that under no circumstances should associated persons be permitted to engage in securities activities for more than 50 business days annually from their primary residences without requiring members to register such residences as branch offices.[6]

Current Definition

NASD currently defines a branch office as any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business. The definition provides that the following activities would not be deemed ''holding out'' and, therefore, would not trigger registration of the location as a branch office: (1) A location identified in a telephone directory, business card, or letterhead; (2) a location referred to in a member advertisement; (3) a location identified in a member's sales literature; and (4) any location where a person conducts business on behalf of the member only occasionally; provided, in each case, the phone number and address of the branch office or Office of Supervisory Jurisdiction (''OSJ'') that supervises the location is also identified. NASD designates locations from which associated persons work as either branch offices or unregistered locations. This designation primarily affects the supervisory responsibilities of, and the fees paid by, members. An office that is designated a ''branch office'' under NASD rules must pay an annual registration fee and have a branch manager on site. A branch office is further classified as an OSJ if any one of the following enumerated activities occurs at the location: order execution, maintenance of customer funds and securities, final approval of new accounts and advertisements, review of customer orders, and supervision of associated persons at other branch offices. NASD represents that an office that is designated an OSJ must have a registered principal on-site and be inspected on an annual basis.[7]

Proposed Uniform Branch Office Definition

The core definition in the proposed uniform definition largely tracks the

[5] 17 CFR 240.17a–3 and 17 CFR 240.17a–4.

[6] *See* Securities Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) (SR–NYSE–2002–34).

[7] NASD Rule 3010(c) provides that each branch office shall be inspected according to a cycle set forth in the firm's written supervisory and inspection procedures.

Commission's Books and Records Rules' definition of ''office.''[8] The proposed rule change does not alter or affect the obligations of a firm to comply with the minimum requirements of the Books and Records Rules which specifies the records broker/dealers must make, and how long those records and other documents relating to a broker/dealer's business must be kept.[9]

The proposed rule change would define a ''branch office'' as any location where one or more associated persons of a member regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such.

The proposed rule change would exclude from registration as a branch office: (1) A location that operates as a back office; (2) a representative's primary residence provided it is not held out to the public and certain other conditions are satisfied; (3) a location, other than the primary residence, that is used for less than 30 business days annually for securities business, is not held out to the public as an office, and satisfies certain of the conditions set forth in the primary residence exception; (4) a location of convenience used occasionally and by appointment; (5) a location used primarily for non-securities business and from which less than 25 securities transactions are effected annually; (6) the floor of an exchange; and (7) a temporary location used as part of a business continuity plan.

In developing the proposed definition, NASD understands the need to provide reasonable exceptions from branch office registration that take into account technological innovations and current business practices without compromising the need for investor protection. NASD believes the proposed exceptions from branch office registration are practically based while still containing important safeguards and limitations to protect investors. For example, the exception from branch office registration for customer service/back office locations would require that no sales activities would be able to be conducted from such locations and such locations would not be able to be held out to the public.

Further, the primary residence exception contains significant safeguards, including that: the location cannot be held out to the public; only one associated person or associated persons who are members of the same immediate family and reside at the location may conduct business at such location; the associated person does not meet with customers at the location; neither customer funds nor securities are handled at that location; the associated person must be assigned to a designated branch office; and such branch office is used on all business cards, stationery, advertisements, and other communications to the public; the associated person's correspondence and communications with the public are subject to the firm's supervision; electronic communications are made through the firm's system; all orders are entered through the designated branch office or an electronic system established by the member and reviewable at such location; written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and the member maintains a list of the locations. These limitations closely track the limitations on the use of a private residence in the Commission's Books and Records Rules which provide that a broker/dealer is not required to maintain records at an office that is a private residence if only one associated person (or multiple associated persons if members of the same family) regularly conducts business at the office, the office is not held out to the public as an office, and neither customer funds nor securities are handled at the office.[10]

As noted above, in addition to these limitations on the primary residence exception, the NYSE believes that if an associated person works primarily from home, such location should be registered as a branch office.[11] Given the different business models used by NASD members that are not also NYSE members, NASD concluded that the 50-business day limitation on the use of a primary residence would not be practical for small firms and independent dealers, and would not provide any added regulatory benefit. NASD represents that NASAA representatives have committed to recommending to their members (state securities regulators) adoption of the proposed branch office definition outlined in this rule filing (thus omitting the 50-business day limitation).[12]

NASD reached its conclusions as to the significant negative impact of the 50-business day requirement on members, without any added corresponding regulatory benefit or investor protection, after considering comments received in response to NASD Notice to Members 02–52. As discussed below, numerous firms asserted that the 50-business day requirement in the primary residence exception to the branch office definition would be burdensome, time consuming, and difficult to enforce. NASD concluded that limited member compliance resources could be more effectively directed to supervising activities at all locations, rather than tracking the number of days and hours an associated person works from his or her primary residence. NASD strongly believes that the numerous other safeguards that would need to be satisfied to qualify for the primary residence exception serve its regulatory needs and protect investors.

The proposed definition also would exempt from branch office registration a temporary location, other than a primary residence, that is used for securities business less than 30-business days in any calendar year. The limitations on the use of a primary residence described above also would apply to use of a temporary location for conducting securities business.[13] For purposes of calculating the number of days for this exception, the proposed rule provides that a ''business day'' would not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during normal business hours.

In exempting offices of convenience from branch office registration, NASD believes that it again has imposed important safeguards for the public. At such offices of convenience, associated persons would be limited to meeting customers occasionally and exclusively by appointment, and the location would not be permitted to be held out to the public as a branch office. The proposed rule notes, however, that where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations, and applicable rules and regulations of NASD, other self-regulatory organizations, and securities or banking regulators would

[8] 17 CFR 240.17a–3 and 17 CFR 240.17a–4.

[9] 17 CFR 240.17a–3 and 17 CFR 240.17a–4.

[10] 17 CFR 240.17a–4(k).

[11] *See* NYSE Response to Comments to File No. SR–NYSE–2002–34, dated March 27, 2003.

[12] Letter dated April 17, 2003, from Christine A. Bruenn, NASAA President, to Marc Menchel, Senior Vice President and General Counsel, Regulatory Policy and Oversight, NASD. NASAA has stated that it supports the proposed uniform definition of ''branch office'' proposed herein and has stated that it will encourage its members (state securities administrators) to adopt the proposed uniform definition.

[13] For purposes of satisfying condition (a) to the temporary location exception, an associated person would be deemed to ''reside'' at such temporary location.

be able to be displayed and would not be deemed ''holding out'' for purposes of this section. Such necessary signage generally is intended to prevent confusing customers who might otherwise believe that traditional riskless investments, such as deposits, are being offered by associated persons at such offices on bank premises. In addition, other than meeting customers at these offices of convenience, all other functions of the associated person would be conducted and supervised through the designated branch office.

The proposed rule also exempts from branch office registration any location that is primarily used to engage in non-securities activities (*e.g.*, insurance) and from which the associated person effects no more than 25 securities transactions in any one calendar year; provided that advertisements or sales literature identifying such location also set forth locations from which the associated person is directly supervised. In addition, such securities activities would be conducted through and supervised by the associated person's designated branch office.

Proposed IM–3010–1 (Standards for Reasonable Review)

Certain state securities regulators have expressed concern about their ability to cite members for violating the inspection and review standards set forth in NASD Rule 3010(c) where a registered person operates from his or her primary residence. They asked NASD staff to review the requirements of Rule 3010(c) and consider clarifying the standards.

NASD staff believes that Rule 3010(c) is an industry benchmark, imposing high standards regarding supervisory obligations and, therefore, should not be amended. As an alternative to amending Rule 3010(c), NASD is proposing new interpretive material, IM–3010–1 (Standards for Reasonable Review). Proposed IM–3010–1 emphasizes the requirement that members already have to establish reasonable supervisory procedures and conduct reviews of locations taking into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, and the disciplinary history of the registered person.[14] The proposed interpretive material notes that members would be required to be especially diligent in establishing procedures and conducting reasonable reviews with respect to non-branch locations. NASD represents that the proposed interpretive material incorporates guidance previously issued on this matter by NASD.

Development of Branch Office Registration System Through CRD®

NASD operates the CRD® system pursuant to policies developed jointly with NASAA. NASD works with the Commission, NASAA, other members of the regulatory community, and member firms to establish policies and procedures reasonably designed to ensure that information submitted to and maintained on the CRD® system is accurate and complete. Currently, members with numerous offices must register with each individual state that requires registration (including annual renewals). Failure of members to timely register offices with a specific jurisdiction can result in significant sanctions; for example, in at least one jurisdiction, failure to timely register (or renew registration) can result in the possible rescission of all trades originated at that location. A uniform branch office definition would establish a broader national standard that would facilitate the development of a branch office registration system through the CRD®. NASD believes this approach would provide efficiency, clarity and cost savings to members and aid securities regulators in conducting regular examinations of such locations to further investor protections. NASD represents that members have strongly supported the use of CRD® to register branch offices because of the enormous potential time and liability savings.[15]

As part of the initiative, NASD expects to seek Commission approval to amend Form U–4 to require members to disclose, but not register, all non-branch locations.[16] Further, NASD expects that the system would include a requirement that a branch office list any other names (''doing business as'' or ''DBAs'') under which it may operate.

NASD expects to develop a new branch office registration form to collect data on each branch office. The new form also would require members to designate registered representatives to specific branch offices. NASD staff expects the system would include certain efficiencies; for example, when a member enters amendments to Form U–4, the system would automatically update corresponding items on the proposed new branch office registration form and vice versa.

NASD believes that it would take up to one year to develop a centralized registration system for branch offices and expects to have the system live by mid-2004.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[17] in general, and with Section 15A(b)(6) of the Act,[18] in particular, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that a uniform definition would better serve the securities industry, regulators, and the public by creating a broader national standard that would allow for central registration of branch offices with NASD through the CRD® system. In addition, NASD represents that the proposed new interpretive material summarizes guidance previously issued on this matter by NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

A version of the proposed rule change, which included the 50-business day requirement in the primary

[14] NASD has filed a proposed rule change with Commission that seeks to adopt new Rule 3012 and amend other rules regarding the supervisory and supervisory control procedures of member firms. As part of such rule filing, Rule 3010(a) would be amended to provide that members must inspect (i) at least annually every office of supervisory jurisdiction and any branch office that supervises one or more branch locations; (ii) at least every three years every branch office that does not supervise one or more non-branch locations; and (iii) on a regular periodic schedule every non-branch location. The rule filing is pending. *See* Securities Exchange Act Release No. 48298 (August 7, 2003), 68 FR 48421 (August 13, 2003) (SR–NASD–2002–162).

[15] *See* Item 5 below for a summary of comment letters received in response to Notice to Members 02–52 (August 2002).

[16] NASD staff is working with NASAA to identify the level of activities that would trigger this reporting requirement.

[17] 15 U.S.C. 78o–3.

[18] 15 U.S.C. 78*o*–3(b)(6).

residence exception, was published for comment in NASD Notice to Members 02–52 (August 2002) (''NtM 02–52''). The text of the proposed rule change is available at the principal office of NASD, and at the Commission. NASD sought comment on whether the proposed uniform definition would: (1) Provide clarity on when a location is required to be registered as a branch office; (2) provide a cost savings to firms as a result of centralized registration of locations through the CRD® system; (3) minimize regulatory compliance burdens; (4) significantly affect the number of locations that a firm is required to register; and (5) adequately address evolving business practices based on technological innovations. Additionally, NASD sought comment on whether the proposed exceptions to the branch office were appropriate.

NtM 02–52 provided members and other interested parties with a checklist of seven questions that they could use to respond to the request for comment in addition to, or in lieu of, sending written comments. NASD noted that the checklist did not cover all aspects of the proposal, and it encouraged commenters to provide written comments, as necessary. NASD extended the comment period from September 20, 2002 to October 21, 2002 and received a total of 137 comments in response to NtM 02–52. A list of commenters and copies of the comment letters received in response to NtM 02–52 is available at the principal office of NASD, and at the Commission.

NASD represents that seventy-eight of the 137 responses to NtM 02–52 consisted solely of written comments (*i.e.*, did not complete the checklist of seven questions provided). The remaining 59 commenters responded to the checklist either in whole or in part. A significant percentage of the commenters identified themselves as member firms or registered representatives associated with NASD member firms. NASD represents that an overwhelming number of the commenters favored the creation of a uniform definition of the term ''branch office'' that would permit centralized registration of locations through CRD®. NASD has summarized the key comments below.

An overwhelming majority of the commenters were in favor of NASD providing centralized registration of branch offices through the CRD® system.[19] Commenters stated that a uniform definition of branch office would greatly simplify their compliance obligations and that a uniform method of registering locations through CRD® would be welcome.[20] One commenter said that the current environment in which they are required to track numerous state definitions of ''branch office,'' fill out different forms to register locations as branch offices, comply with varying supervisory requirements for such offices and spend significant amounts of administrative time and energy complying is a very frustrating process and that the present situation is in dire need of immediate change.[21] However, numerous commenters expressed concern that a central registration system, while an improvement, could be too costly.

Commenters expressed concern about the impact of the proposed definition on the supervisory systems of their firms and related registration costs.[22] Commenters stated that the proposed definition would significantly increase registration fees and supervisory obligations of members.[23] Several commenters stated that the proposed definition would cause offices currently registered as branch offices to become OSJs since NASD Rule 3010(g)(1)(G) defines an OSJ as any office that supervises the activities of persons associated with other branch offices. Supervisors at these new OSJs would have to become registered principals.[24] Other commenters noted that smaller offices in smaller communities may elect to shut down their securities business and restrict themselves to related fields in which they may now be involved, such as insurance and tax preparation—this would mean less access to the financial system for people in these communities.[25]

In addition, commenters were concerned that the proposed definition would significantly increase the number of branch offices they would have to register. Commenters stated that they have between 0 and 225 branch offices currently registered but could have between 0 and 3,400 registered branch offices under the proposed uniform definition (based on a proposed definition that includes a 50-business day restriction in the primary residence exception). One commenter stated that with such definition, the firm would go from 1 to 700 registered branch offices.[26] A second commenter stated that they would go from 658 registered branch offices to over 1,000 registered branch offices if the proposed definition is applied to its unregistered offices and residential offices.[27]

Several commenters stated that any costs savings resulting from centralized registration of branch offices through CRD® would be greatly outweighed by the substantial increases in costs caused by having to register hundreds of remote locations as branch offices.[28] Commenters generally were concerned that the proposed branch office definition (including the 50-business day limitation in the primary residence exception) would greatly increase their costs. These increased costs would include NASD and state registration fees, state corporation income tax filings, Fidelity bond coverage premiums, personnel time and travel expenses for inspections, and the hiring of more staff for supervision. A few commenters offered cost increase estimates ranging from $3,000 to $450,000 and elaborated on the reasons

[19] *See, e.g.*, Allmerica Financial comment letter, dated August 28, 2002; Assist Investment Management Co., Inc. comment letter, dated October 18, 2002; Anderson LeNeave & Co. comment letter, dated September 13, 2002; B. Riley & Co. comment letter, dated September 10, 2002; BB&T Investment Services, Inc. comment letter, dated September 18, 2002; Carillon Investments, Inc. comment letter, dated September 16, 2002; Empire Securities Corporation of Southern California comment letter, dated September 17, 2002; GWR Investments, Inc. comment letter, dated October 25, 2002; Investment Centers of America, Inc. comment letter, dated August 30, 2002; Lesko Securities, Inc. comment letter, dated September 18, 2002; Packerland Brokerage Services, Inc. comment letter, dated September 9, 2002; Paradigm Equities, Inc. comment letter, dated October 18, 2002; Presidio Financial Services, Inc. comment letter, dated October 3, 2002; Private Portfolio, Inc. comment letter, dated August 22, 2002; Raike Financial Group, Inc. comment letter, dated September 9, 2002; Securian Financial Services, Inc. comment letter, dated September 6, 2002; and Triad Advisors, Inc. comment letter, dated September 20, 2002.

[20] *See, e.g.*, Associated Securities Corp. comment letter dated September 13, 2002; Horace Mann Investors, Inc. comment letter, dated September 20, 2002; Securian Financial Services, Inc. comment letter, dated September 6, 2002; and T. Rowe Price Investment Securities, Inc. comment letter, dated September 19, 2002.

[21] *See* The O.N. Equity Sales Company comment letter, dated October 21, 2002.

[22] *See, e.g.*, Mission Securities comment letter, dated September 17, 2002; and Oak Tree Securities comment letter, dated September 20, 2002.

[23] *See, e.g.*, Lesko Securities, Inc. comment letter, dated September 18, 2002; National Planning Holdings, Inc. comment letter, dated September 3, 2002; National Association of Independent Broker/Dealers comment letter, dated September 7, 2002; and Transamerica Financial Advisors comment letter, dated September 16, 2002.

[24] *See, e.g.*, Granite Securities, LLC comment letter, dated September 20, 2002; Equity Services, Inc. comment letter, dated September 19, 2002; and Lincoln Financial Advisors, Corp. comment letter, dated October 17, 2002.

[25] *See, e.g.*, AM&M Investment Brokers comment letter, dated September 23, 2002.

[26] *See* Horace Mann Investors, Inc. comment letter, dated September 20, 2002.

[27] *See* Lincoln Financial Services, Inc. comment letter, dated October 17, 2002.

[28] *See, e.g.*, Transamerica Financial Advisors comment letter, dated September 16, 2002; and Horace Mann Investors, Inc. comment letter, dated September 20, 2002.

for such increases.[29] Several commenters said that they could not accurately gauge cost increases until they know how states will amend their definitions. Several commenters suggested that NASD consider reducing its registration fees so that the rule change is revenue neutral for NASD and the financial burden on firms is minimized.[30] Commenters stated that they would realize certain cost efficiencies through centralized registration, provided the states also adopted the proposed definition.[31] NASD believes that the removal of the 50-business day requirement from the primary residence exception would alleviate some of the burdens that the original proposal raised regarding members' supervisory systems.

As noted earlier, the proposed definition as set forth in NtM 02–52 provided an exception from branch office registration for a primary residence that is used for securities business for less than 50-business days in any one calendar year and that satisfies, among other things, conditions similar to those found in the Commission's Books and Records Rules definition for ''office.'' An overwhelming majority of the commenters stated that they could not support the proposed definition with a 50-business day requirement because it would be too burdensome, time consuming, and difficult to enforce.[32] Commenters argued that no added investor protection would be gained for this restriction.[33] Commenters stated that branch office registration should be based on the types of activities conducted at a location and not based on the number of days logged at a given location.[34] In addition, several commenters stated that they view the proposal to be unenforceable because just as firms are unable to track the number of times representatives are involved in securities transactions for their clients from a certain location, NASD will similarly be unable to track such usage.[35]

Commenters, small firms in particular, stated that tracking the 50-business day requirement would introduce a tremendous compliance burden.[36] Commenters said the 50-business day limitation would require firms to closely monitor where work has been performed and for how long, and such monitoring would be prone to error. Commenters stated that the proposed definition provides sufficient restrictions on the use of a primary residence office and, so long as the activities are substantially limited (*e.g.*, no holding out of the residence as a place to conduct securities business, and no handling of funds or securities at the location) and the location is properly supervised, the number of days logged at such residential location should not trigger registration of such location as a branch office.[37] Commenters also stated that the resulting increase in supervisory costs would cause firms to act contrary to all employment trends by prohibiting people from working outside the office.

Commenters also noted that elimination of the 50-business day restriction would be consistent with the Books and Records Rules. They asserted that since the Books and Records Rules do not require records to be kept at these sites for examinations, there should be no reason to register a representative's primary residence regardless of the number of days it is used for securities business, provided the other conditions to the exception are satisfied.[38]

Based on the comments to NtM 02–52, NASD is proposing to retain the definition described in NtM 02–52, without the 50-business day restriction contained in the primary residence exception. The elimination of the 50-business day requirement contained in the primary residence exception should mitigate the additional registration and supervisory burdens on firms that would result from the proposed rule change. In addition, NASD believes these modifications would not disrupt the business model used by many NASD member firms.

Commenters also expressed concern that the temporary location exception in the proposed definition is too restrictive. The proposed definition provides an exception from branch office registration for a location, other than a primary residence, that is used for securities business less than 30 business days in any one calendar year and that satisfies the other conditions set forth in the primary residence exception. Certain commenters asked that the 30-business day limitation be eliminated for many of the same reasons described above with respect to the 50-business day requirement in the primary residence exception. NASD, however, believes that limiting the number of days such location can be used is consistent with the intent of this exception. The exception from registration is for a temporary location, as opposed to a primary residence, and a bright-line test of what constitutes ''temporary'' is intended to make the application of this exception consistent.

Commenters also sought clarification as to the application of the office of convenience exception. The proposed definition provides an exception from branch office registration for any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, and that is not held out to the public. Commenters sought clarification on whether this exception applies to associated persons generally or is limited strictly to bank circuit riders.[39] In numerous discussions with members and others, NASD has made clear that this exception is applicable to all members that satisfy the conditions, not just bank circuit riders.

Commenters also raised concerns about the non-securities business location exception. The proposed definition provides an exception from branch office registration for any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year so long as the address/phone number of the supervising office is set forth on all

[29] *See, e.g.*, Signator Investors, Inc. comment letter, dated October 16, 2002; and Granite Securities, LLC comment letter, dated September 20, 2002.

[30] *See, e.g.*, Equity Services, Inc. comment letter, dated September 19, 2002; 1st Global Securities, Inc. comment letter, dated September 4, 2002; Moloney Securities Co., Inc. comment letter, dated October 19, 2002; Safeco Investment Services, Inc. comment letter, dated October 11, 2002; State Farm Insurance Companies comment letter, dated October 18, 2002; Sunset Financial Services comment letter, dated October 21, 2002; and The O.N. Equity Sales Company comment letter, dated October 15, 2002.

[31] *See, e.g.*, The O.N. Equity Sales Company comment letter, dated October 15, 2002; and Metropolitan Life Insurance Company comment letter, dated September 30, 2002.

[32] *See, e.g.*, Empire Securities Corporation of Southern California comment letter, dated September 17, 2002; INVEST Financial Corporation comment letter, dated September 4, 2002; and Securian Financial Services, Inc. comment letter, dated September 6, 2002.

[33] *See, e.g.*, Securities Industry Association comment letter, dated October 21, 2002; and International Money Management Group, Inc. comment letter, dated September 26, 2002.

[34] *See, e.g.*, AM&M Investment Brokers comment letter, dated September 23, 2002.

[35] *See* Keystone Capital Corporation comment letter, dated September 7, 2002; and XCU Capital Corporation comment letter, dated September 16, 2002.

[36] *See, e.g.*, Pashley Financial comment letter, dated September 23, 2002; and Vasiliou & Company, Inc. comment letter, dated October 1, 2002.

[37] *See, e.g.*, GWR Investments, Inc. comment letter, dated October 25, 2002; and A.G. Edwards, Inc. comment letter, dated October 11, 2002.

[38] *See, e.g.*, Securian Financial Services, Inc. comment letter, dated September 6, 2002; and A.G. Edwards & Sons, Inc. comment letter, dated October 11, 2002.

[39] *See, e.g.*, BB&T Investment Services, Inc. comment letter, dated September 18, 2002.

advertisements. Commenters said that the non-securities business exception, which limits securities activities to no more than 25 securities transactions annually, is vague and that the threshold number is too low.[40] Commenters asked that the number of securities transactions allowed in any one-year be increased, or that certain systematic (automatic) payments not count towards the 25 securities transactions limit.[41] In this regard, NASD intends to provide interpretive guidance to members on a case-by-case basis regarding specific application of the exception.

Commenters also stated that the proposed rule is not in step with the prevalent use of modern communications technology to effect transactions from remote locations because it continues to use a ''bricks and mortar'' approach to the definition.[42] Commenters stated that modern communications technology, such as mobile telephones, laptop computers, and personal digital assistants (PDAs), is diminishing the need for branch offices to be in a physical location. With such technology, registered representative can effect transactions anywhere. These commenters asserted that consumers and investors now accept such means of conducting business and the proposed definition is outdated.[43] Several commenters also stated that the proposal, which would require the listing of branch office locations, including primary residences, might invade the privacy of registered representatives. The commenters stated that addresses of primary residence offices should not be made publicly available.[44]

Based on the comments to NtM 02–52, NASD is proposing changes to the original proposal as described above. NASD believes that these modifications would address a majority of concerns raised by commenters to the original proposal. Overall, NASD believes that the proposed definition would establish a broader national standard for classifying such locations and would provide administrative and cost efficiencies to members through the creation of a centralized registration system on CRD®. In addition, NASD believes that the proposed rule change would allow regulators to effectively monitor and audit locations and the activities conducted there without compromising investor protection. Each exception to the proposed branch office definition contains important safeguards and limitations. In particular, the primary residence exception contains the same safeguards provided in the Commission's Books and Records Rules exception for private residences (which also does not contain any restrictions on the number of business days an associated person may operate from his or her residence). NASD determined to remove the 50-business day requirement from the primary residence exception because NASD believes it does not serve any added regulatory benefit and, instead, imposes substantial costs and burdens to the industry. Based on the extensive comments from the industry, NASD, on balance, does not believe that the costs of such provision outweigh the benefits.

NASD would announce the effective date of the proposed definition of the term ''branch office'' in a Notice to Members. NASD expects the effective date of the proposed rule change would correspond with the commencement date of the centralized branch office registration system on CRD®.

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, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. In particular, the Commission seeks commenters' specific views on the primary residence exception and the divergent proposals by NASD and the NYSE with respect to the NYSE's proposed annual 50-business day limitation on engaging in securities activities from a primary residence.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–104 and should be submitted by January 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30987 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48887; File No. SR–NASD–2003–110]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings

December 5, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

[40] *See, e.g.*, Northwestern Mutual Investment Services, LLC comment letter, dated September 20, 2002; and Carillon Investments, Inc. comment letter, dated September 16, 2002.

[41] *See, e.g.*, Equity Services, Inc. comment letter, dated September 19, 2002.

[42] *See, e.g.*, Associated Securities Corporation comment letter, dated September 13, 2002.

[43] *See, e.g.*, Lincoln Financial Advisors comment letter, dated October 17, 2002; and Source Capital Group comment letter, dated September 19, 2002.

[44] *See, e.g.*, Keystone Capital Corporation comment letter, dated September 7, 2002; Mission Securities Corporation comment letter, dated September 17, 2002; and West America Securities Corp. comment letter, dated September 17, 2002; and National Planning Holdings, Inc. comment letter, dated September 3, 2002.

[45] 17 CFR 200.30–3(a)(12).

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), the proposed rule change as described in items I, II, and III below, which items have been prepared by the NASD. On September 2, 2003, the NASD filed an amendment to the proposed rule change.[3] On November 18, 2003, the NASD again amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to create a new rule series, the proposed NASD Rule 9550 Series, to consolidate, clarify and streamline those existing procedural rules that have an expedited proceeding component. The text of the proposed rule change is available at the NASD and at the Commission.

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 NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes to modify certain NASD rules that have an expedited proceeding component to make them more understandable and uniform, and to make the overall process for actions covered by such rules more efficient. Existing NASD rules recognize that expedited treatment is needed for certain types of actions. These actions fall into two general categories: (i) Those that involve misconduct capable of causing further harm to the investing public, other members or the integrity of the markets; and (ii) those that can be appropriately expedited for administrative ease. Unlike disciplinary actions that may concern complex sales-practice violations, the expedited actions that are affected by this proposal generally involve straightforward issues unrelated to complicated securities transactions (*e.g.*, whether the respondent paid an arbitration award or NASD fee, provided information requested by NASD staff, or complied with the net capital requirements).[5]

However, the present NASD rules that have provisions for fast-track procedures vary considerably in some respects and overlap in others, at times without any clear rationale. The proposed rule change, discussed in detail below, streamlines and clarifies the existing expedited rules and makes them more uniform. At the same time, the modifications, which do not abrogate any substantive rights held by members or associated persons, continue to ensure that expedited actions are fair to all parties. The current rules that have been renumbered and otherwise affected by the proposed rule change are as follows:

- NASD Rule 8220 Series (Suspension for Obstructing Investigations);[6]
- NASD Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties);[7]
- NASD Rule 9510 Series (Summary and Non-Summary Proceedings);[8]
- NASD Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges);[9] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Kathy England, Assistant Director, Division of Market Regulation (''Division''), Commission dated August 29, 2003 (''Amendment No. 1''). Amendment No. 1 amended and superseded the proposed rule change in its entirety.

[4] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Kathy England, Assistant Director, Division, Commission dated November 17, 2003 (''Amendment No. 2''). Amendment No. 2 amended and superseded the proposed rule change in its entirety.

[5] In most instances, the issues raised by these types of proceedings are uncomplicated and the defenses are limited. For example, in a case involving a respondent's failure to pay an arbitration award, the issue presented is whether the member or person has paid the award. A respondent cannot collaterally attack the actual arbitration award. *See John G. Pearce,* 52 S.E.C. 796, 798, 1996 SEC LEXIS 1329, at *5 (1996) (''To permit a party dissatisfied with an arbitral award to attack it collaterally for legal flaws in a subsequent disciplinary proceeding would subvert the salutary objective that the NASD's [arbitration] resolution seeks to promote.''); *see also James Anthony Morrill,* 51 S.E.C. 1162, 1164 n.6, 1994 SEC LEXIS 1766, at *6 (1994) (same). Similarly, in an action for failure to provide information, the issue presented is whether the respondent provided information requested by the NASD. It is well settled that respondents must fully and promptly cooperate with the NASD, *see Mark Allen Elliott,* 51 S.E.C. 1148, 1150, 1994 SEC LEXIS 1765, at *5–6 (1994), and respondents cannot second guess NASD information requests or impose conditions on responding. *See Joseph Patrick Hannan,* 53 S.E.C. 854, 859, 1998 SEC LEXIS 1955, at *11 (1998) (''[A]n NASD member may not 'second guess' or 'impose conditions on' the NASD's request for information.''); *Michael David Borth,* 51 S.E.C. 178, 181, 1992 SEC LEXIS 3248, at *7 (1992) (''The Rules do not permit second guessing the NASD's requests'' or permit a respondent ''to shift his responsibility to others * * *''). The issues also are very narrow in a net capital case. Indeed, ''[t]he gravamen of the charge is the conduct of business by the firm while its net capital is deficient. The cause of the deficiency does not bear on this issue.'' *Charters & Co. of Miami,* 43 S.E.C. 175, 177, 1966 SEC LEXIS 189, at *6 (1966). *See also Litwin Securities, Inc.,* 52 S.E.C. 1339, 1344–45, 1997 SEC LEXIS 1146, at *16 (1997) (holding that intent is irrelevant to whether a respondent violated the net-capital requirements).

[6] The current NASD Rule 8220 Series (Suspension for Obstructing Investigations) is now located at proposed NASD Rule 9552 (Failure to Provide Information or Keep Information Current).

[7] The current NASD Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties) is now located at proposed NASD Rule 9557 (Procedures for Regulating Activities Under NASD Rules 3130 and 3131 Regarding a Member Experiencing Financial or Operational Difficulties). As noted above, on September 4, 2003, the Commission approved certain NASD proposed changes to NASD Rules 3130 and 3131 and the NASD Rule 9410 Series. *See* Securities Exchange Act Release No. 48438 (September 4, 2003), 68 FR 53766 (September 12, 2003) (SR–NASD–2003–74) (Commission Approval Order of NASD Proposed Rule Change Regarding the Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties).

[8] The current NASD Rule 9510 Series (Summary and Non-Summary Proceedings) has been separated into a number of individual proposed rules. Summary proceedings under NASD Rule 9511(a)(1) for actions authorized under section 15A(h)(3) of the Act are now located at proposed NASD Rule 9558 (Summary Proceedings for Actions Authorized by section 15A(h)(3) of the Act). Non-summary proceedings under NASD Rule 9511(a)(2)(A) for failure to comply with an arbitration award or related settlement agreement are now located at proposed NASD Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement). Non-summary proceedings under NASD Rule 9511(a)(2)(B) for failure to meet the qualification requirements or other prerequisites for access to the NASD or member services is now located at proposed NASD Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services). Non-summary proceedings under NASD Rule 9511(a)(2)(C) for failure to adhere to certain public communication standards are now located at proposed NASD Rule 9551 (Failure to Comply with the Public Communication Standards). Finally, non-summary proceedings under NASD Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order are now located at proposed NASD Rule 9556 (Failure to Comply with a Temporary or Permanent Cease and Desist Order). It should be noted that proposed NASD Rule 9556, along with the NASD Rule 9800 Series and related amendments adopted by SR–NASD–98–80, will expire on June 23, 2005, unless extended or permanently adopted by the NASD pursuant to Commission approval at or before such date.

[9] The current NASD Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues,

Continued

- NASD Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards).[10]

With this proposed rule change, the NASD believes that the first major improvement to the expedited proceedings provisions is that they are reorganized into a single rule series, the proposed NASD Rule 9550 Series, and each type of action is clearly labeled. At present, the various types of expedited proceedings are scattered throughout the NASD's rules, in many instances without clear headings,[11] increasing the likelihood of confusion for interested parties and adjudicators. Going forward, interested parties will simply need to review the NASD Rule 9550 Series, with its clearly marked subheadings, to ascertain their rights and obligations with regard to expedited actions.

The proposed amendments also consolidate some current expedited rules that have similar or overlapping provisions. For instance, current NASD Rules 8221(a) and (b) and 9541(a) and (b) have identical provisions that allow NASD staff to issue a notice of suspension if a member or associated person ''fails to provide any information, report, material, data, or testimony.'' These provisions are consolidated into a single rule, proposed NASD Rule 9552, under the proposed amendments. Similarly, current NASD Rules 9511(a)(2)(B) and 9541(c) both cover situations where a member or associated person fails to meet eligibility or qualification standards. Under the proposal, these provisions are now consolidated and clarified under the amendments as proposed NASD Rule 9555. The NASD believes that the consolidation of these various rules will alleviate the current confusion over which rule to use in a particular situation.

The proposed amendments, moreover, separate into individual rules some provisions, the consolidation of which has caused confusion. The proposed amendments, for example, separate the four ''non-summary'' actions currently located in NASD Rule 9511(a)(2) for failure to pay an arbitration award, failure to meet eligibility or qualification standards, failure to comply with certain public communication standards and failure to comply with a cease and desist order. The NASD believes that these provisions were not logically connected to one another; they are separated into individual rules under the proposed amendments.[12] The substance of the four provisions remains intact, however. The NASD proposes to separate these four provisions into individual rules so that the rule headings clearly denote the substance of the actions. The NASD believes that the previous heading of ''non-summary'' proceedings was confusing because there are a number of rules that have an expedited component that could be viewed as ''non-summary'' in nature.

In addition, the proposed rule change modifies the authorization provision for initiating certain summary proceedings. Pursuant to section 15A(h)(3) of the Act,[13] existing NASD Rule 9512 allows the summary suspension or limitation of activities of a member or associated person when, for example, another self-regulatory organization has expelled, barred or suspended the member or associated person, or when the member is in such financial or operating difficulty that it cannot be permitted to continue to do business as a member with safety to investors, creditors, other members or the NASD. Currently, the NASD may only invoke NASD Rule 9512 with NASD Board authorization.[14] The proposed rule change would allow the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs (rather than the Board) to authorize the issuance of summary proceeding notices, which begin the summary proceeding process. The NASD would only initiate a summary proceeding under circumstances demanding quick action. This modification to the authorization provision would avoid the logistical difficulties of having to obtain the necessary authorization from the Board on short notice, while at the same time ensuring that such decisions are made at the highest NASD staff levels.[15] Unlike the current summary provision, moreover, the modified provision provides that a respondent's request for a hearing generally will result in a stay of the action.[16]

The proposed amendments also reorganize the hearing provisions of these various rules into a single rule within the new NASD Rule 9550 Series. The NASD believes that the new hearing rule, proposed NASD Rule 9559, creates a uniform, efficient and manageable expedited procedure consistent with the NASD's obligations to the investing public, the securities markets and NASD members. Under the proposal, a respondent may request a hearing at any time prior to the effective date of the action contained in the notice issued pursuant to the new NASD Rule 9550 Series. Under the present scheme, some rules have five-day periods while others have seven-day periods to request hearings,[17] even though the notices often do not become effective for much longer periods of time.[18] This new provision ties the periods together, giving respondents more time to request a hearing without altering the expedited nature of the proceedings.

The NASD believes that the proposed NASD Rule 9550 Series also simplifies the actual hearing process in a number of ways. First, the rule series channels all requests for hearings to the Office of Hearing Officers (''OHO''). At present, various expedited proceedings are held before different adjudicative bodies—*e.g.*, NASD Board hearing panels, National Adjudicatory Council (''NAC'') hearing panels, OHO hearing panels,

Fees and Other Charges) is now located at proposed NASD Rule 9553 (Failure to Pay NASD Dues, Fees and Other Charges).

[10] The current NASD Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards) has been combined with two proposed rules. NASD Rules 9541(a) and (b) regarding failure to provide information is now located at proposed NASD Rule 9552 (Failure to Provide Information or Keep Information Current). NASD Rule 9541(c) regarding failure to meet the eligibility and qualification standards is now located at proposed NASD Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

[11] For instance, NASD Rule 9511(a)(2) covers three distinct and unrelated types of conduct without any description in the title beyond ''non-summary proceedings.''

[12] As discussed above, current NASD Rule 9511(a)(2)(A) (Failure to Comply with an Arbitration Award) is now located at proposed NASD Rule 9554. Current NASD Rule 9511(a)(2)(B) (Failure to Meet Eligibility or Qualification Standards) is now located at proposed NASD Rule 9555. Current NASD Rule 9511(a)(2)(C) (Failure to Comply with Certain Public Communication Standards) is now located at proposed NASD Rule 9551. Finally, current NASD Rule 9511(a)(2)(D) (Failure to Comply with a Temporary or Permanent Cease and Desist Order) is now located at proposed NASD Rule 9556.

[13] 15 U.S.C. 78*o*–3(h)(3).

[14] The present requirement that the NASD Board must authorize such actions is set forth in NASD's rule and not in the Act.

[15] This proposed change makes the authorization provision for summary proceedings consistent with the authorization provision for temporary cease and desist orders under NASD Rule 9810(a).

[16] As mentioned *supra*, the summary proceedings provisions have been renumbered and will be located at proposed NASD Rule 9558.

[17] *Compare* NASD Rules 8222(a) (a respondent must request a hearing within *five* days of the service of the notice); 9413(a) (same); 9532(a) (same); 9542(a) (same) *with* NASD Rule 9514(a)(1) (a respondent must request a hearing within *seven* days of the service of the notice).

[18] See, *e.g.*, NASD Rules 8221–22 (respondent must request hearing within five days of service of notice but the notice of suspension does not become effective for 20 days); NASD Rules 9531–32 (respondent must request hearing within five days of the notice but the notice of suspension or cancellation does not become effective until 15 days after service of the notice); NASD Rule 9541–42 (respondent must request hearing within five days of service of notice but the notice of suspension does not become effective for 20 days).

Hearing Officers—with little justification. This practice has proven to be cumbersome. Under the proposed amendments, respondents file a written request for a hearing with OHO. For actions involving a failure to pay an arbitration award or NASD fees, a Hearing Officer from OHO will act as the sole adjudicator, as is the current practice. For all other matters involving expedited proceedings, an OHO-appointed hearing panel, consisting of a hearing officer and two hearing panelists, will act as the adjudicative body.[19] Second, the amendments allow adjudicators to conduct hearings by telephone. Third, the proposed rule series will allow various expedited actions to be consolidated, eliminating the need for parties to litigate related matters in separate venues.[20] In brief, the NASD believes that the fairness of the process will not be impaired—and the efficiency will be improved—by these changes.

Furthermore, the NASD believes that the proposed NASD Rule 9550 Series provides respondents with greater protection by mandating that the action be stayed while the matter is pending, save for limited circumstances. The current rules with expedited components take different approaches as to whether a request for a hearing stays the action.[21] In general, under the proposed NASD Rule 9550 Series, a request for a hearing automatically stays the action, unless the Hearing Officer orders otherwise (*e.g.*, where there is a threat of harm to the public or other members if the suspension or limitation is not immediately effective). In the ordinary case, this provision will allow respondents to be heard before the suspension, bar or expulsion takes effect. However, the streamlined procedures for final NASD action, discussed below, ensure that the action will not be stayed for a prolonged period (as can now happen due, in part, to the infrequency of NAC and NASD Board meetings and the difficulty of using special mailing ballots). The NASD believes that the rule change strikes an appropriate balance between the need to ensure fairness to respondents and the need for swift action in appropriate cases.

As indicated above, the NASD believes that the proposed NASD Rule 9550 Series streamlines the procedures for final NASD action. In general, hearings must be conducted and matters resolved within a specified, shortened timeframe once a respondent requests a hearing.[22] The NASD believes that the use of such deadlines is consistent with the Commission's recent adoption of amendments to its Rules of Practice that impose binding completion dates in certain Commission administrative proceedings.[23] The NASD believes that the deadlines also are consistent with both the Commission's and the NASD's emphasis on ''real-time enforcement.''

Once the hearing panel or Hearing Officer issues the initial decision, the NAC's Review Subcommittee has the ability to call the matter for review in a condensed timeframe. As is currently the case with most expedited rules, respondents will not have the right to appeal the matter to the NAC,[24] and the NASD Board will not have the ability to call the matter for review. Thus, the hearing panel or Hearing Officer decision, if not called for review by the NAC, is the NASD's final action. However, the respondent would have the ability to appeal a hearing panel or Hearing Officer decision to the Commission.[25] The NASD believes that these provisions ensure that respondents have a right to a full and fair hearing before OHO and that the NAC has the ability to call matters for review when appropriate, while eliminating time-consuming review that can significantly delay the effectiveness of the subject action without necessarily adding benefit to the decision-making process in these uncomplicated matters.[26]

Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, ''the Association,'' ''the NASD''

[19] The Chief Hearing Officer will select as Panelists persons who meet the qualifications delineated in NASD Rule 9231(b).

[20] It is not uncommon for a firm to experience multiple, related problems, for example, a financial crisis, issues about the qualifications of the Financial Operations Principal, and a failure to provide information in response to NASD staff's queries about the problems. Under the current rules, NASD staff would be required to initiate multiple proceedings to address the issues.

[21] *Compare* NASD Rule 8220 Series (request for a hearing does not stay the action); NASD Rule 9514 (c)(1) (request for a hearing does not stay the action); *with* NASD Rule 9413(c) (request for a hearing does stay the action); NASD Rule 9514(c)(2) (request for a hearing does stay action as to certain alleged violations but does not as to others); NASD Rule 9532(a) (request for a hearing does stay the action); NASD Rule 9542(a) (request for a hearing does stay the action).

[22] For instance, proposed NASD Rule 9559(f) requires that hearings for failure to comply with cease and desist orders, summary proceedings and members experiencing financial or operational difficulties be held within 14 days, and hearings for all other actions be held within 60 days of a request for a hearing. In addition, under proposed NASD Rule 9559(o), OHO must issue a decision in cases involving a failure to comply with cease and desist orders, a summary proceeding or a member experiencing financial or operational difficulty within 21 days and in all other cases within 60 days of the date of the close of the hearing. However, the Hearing Officer or, if applicable, hearing panel is given flexibility to manage the progress of the case. In some instances, parties legitimately may need more time to explore the issues in the case, gather and provide detailed documentation, make preparations for witnesses, draft and file motions, etc. For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the hearing panel may extend or shorten any time limits prescribed by the rule. The proposed rule change thus gives adjudicators the discretion to adapt to the circumstances of each case.

[23] *See* Release Nos. 33–8240, 34–48018, 35–27686, 39–2408 (June 11, 2003), 68 FR 35787 (June 17, 2003) (Commission Adoption of Amendments to Rules of Practice). In the release, the Commission stated, ''Based upon [our] experience with non-binding completion dates, the Commission has determined that timely completion of proceedings can be achieved more successfully through the adoption of mandatory deadlines and procedures designed to meet these deadlines.'' *Id.* The Commission also stated, ''Any and all deadlines and timelines established by these amendments to the Commission's Rules of Practice confer no substantive rights on respondents.'' *Id.* at 35788. As with the Commission's amendments, the deadlines and timelines established by the NASD's proposed amendments for hearing panels and the NAC to hold hearings and issue decisions confer no substantive rights on respondents.

[24] Under many of the existing rules with expedited components, respondents may not appeal the matter to an NASD appellate body, such as the NAC. For example, the NAC appoints the original, ''trial level'' hearing panel in actions under the NASD Rule 8220 Series (failure to provide information). The NASD Board appoints the hearing panel in actions under the NASD Rule 9510 Series (summary and non-summary proceedings). Under neither rule series does a respondent have any right of appeal to an internal, NASD appellate body. Similarly, an OHO appointed hearing panel's decision in actions under the NASD Rule 9410 Series (member experiencing financial or operational difficulties) and NASD Rule 9530 (failure to pay fees) is not appealable to the NAC or any other internal, NASD appellate body under the existing system.

[25] As is currently the case, a respondent's appeal of an expedited action to the Commission would be governed by Section 19(f) of the Act. *See William J. Gallagher*, Securities Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *5 (March 14, 2003) (reviewing appeal involving failure to pay arbitration award under Section 19(f) of the Act and explaining that the Commission need only to find that ''the 'specific grounds' on which the SRO based its action 'exist in fact' ''). Of course, an adjudicator's determination regarding a request for extraordinary relief (*e.g.*, a motion for leave to file a late request for a hearing) is not appealable to the Commission. *See Warren B. Minton, Jr.*, Securities Exchange Act Release No. 46709, 2002 SEC LEXIS 2712, at *9–10 (October 23, 2002) (''[W]e do not have jurisdiction to review the NASD's denial of Minton's motion to vacate the default. * * * [T]he NASD merely rejected Minton's collateral attack on the NASD's [previous] action. * * * [E]ven if an applicant is adversely affected by the NASD's denial of a motion to set aside a default, that fact 'does not transform the denial into a reviewable NASD order.' ''); *Gary A. Fox*, Securities Exchange Act Release. No. 46511, 2002 SEC LEXIS 2381, at *3–5 (September 18, 2002) (''[W]e are precluded from considering an applicant's application for review if that applicant failed to follow the NASD's procedures. * * * Fox failed to respond to NASD requests for information, failed to respond to the * * * notice of his suspension, and failed to apply for reinstatement within the time required''. [W]e are [thus] precluded from considering Fox's application for review.'').

[26] *See supra* note 5 and accompanying text.

or ''NASD Regulation, Inc.'' Instead, the NASD uses ''NASD'' unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces several references to ''the Association'' and ''the NASD'' in the text of the proposed rule change with the name ''NASD'' and deletes several references to ''NASD Regulation, Inc.'' Although the proposal would delete the name ''NASD Regulation, Inc.'' NASD Regulation, Inc. will continue to perform the functions described in the rule.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[27] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(7) of the Act,[28] which provides that NASD members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or the NASD's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 NASD consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NASD–2003–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–110 and should be submitted by January 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30989 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

[27] 15 U.S.C. 78o–3(b)(6).

[28] 15 U.S.C. 78o–3(b)(7).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48893; File No. SR–PCX–2003–38]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Establishment of a Cross-and-Post Order Type

December 8, 2003.

I. Introduction

On July 23, 2003, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a new order type, the ''Cross-and-Post Order,'' for use on the Archipelago Exchange (''ArcaEx''). On September 25, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on October 29, 2003.[4] The Commission received no comments in response to the proposal. This order approves the PCX's proposed rule change.

II. Description

The PCX, through its wholly owned subsidiary, PCX Equities, Inc. (''PCXE'') proposed to adopt a new order type called a ''Cross-and-Post Order.'' The Cross-and-Post Order would be an order that is executed pursuant to the existing ''Cross Order'' rules [5] while allowing for any residual portion of the Cross Order to be displayed in the Arca Book. Further, the ArcaEx trading system would cancel a Cross-and-Post Order at the time of order entry if: (i) The cross price would cause an execution at a price that trades through the NBBO; or (ii) the cross price is between the BBO and does not improve the BBO by the minimum price improvement increment (''MPII'') pursuant to PCXE Rule 7.6(a), Commentary .06.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 48676 (October 21, 2003), 68 FR 61711 (SR–PCX–2003–38).

[5] A ''Cross Order'' is a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the ''cross price''). *See* PCXE Rule 7.31(s).

[6] The MPII on ArcaEx is equal to $0.01 or 10% of the NBBO spread, whichever is greater. See PCXE Rule 7.6(a), Commentary .06. Under current PCXE rules, the MPII requirements must be satisfied in

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with section 6(b) of the Act [7] in general and furthers the objectives of section 6(b)(5) of the Act.[8] The Commission believes that the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanism of a free and open market.[9]

The Commission believes that Cross-and-Post Orders will facilitate order interaction on ArcaEx and increase investor choices with respect to executing orders. Currently on ArcaEx, any portion of a Cross Order that remains unexecuted is canceled. Customers must then re-enter the residual portion of the order if they wish to have it posted in the Arca Book. The Commission believes that the Cross-and-Post Order will enable automatic electronic posting of the residual portion of the Cross-and-Post Order.

IV. Order Granting Approval

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change, as amended (SR–PCX–2003–38), is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30939 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

the execution of Cross Orders. *See* PCXE Rule 7.31(s).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this rule, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48888; File No. SR–PCX–2003–46]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Transmission of Identity Orders

December 5, 2003.

I. Introduction

On September 5, 2003, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to offer an identity order feature to its Equities Trading Permit (''ETP'') Holders. On September 30, 2003, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for public comment in the **Federal Register** on October 16, 2003.[3] The Commission received one comment letter on the proposal.[4] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The PCX proposes to offer ETP Holders the ability to display their identities with orders entered into the Archipelago Exchange (''ArcaEx''). The identity order feature would offer an ETP Holder the choice to display its unique ETP Identifier (''ETPID'') with a specified order. Alternatively, an ETP Holder may choose to remain anonymous.

Any identity orders entered into ArcaEx would be included in the Arca Book data feed that ArcaEx makes available free of charge to Users [5] and other subscribers. Identity orders would also be included in the ArcaEx limit order book that is displayed for free on the ArcaEx Web site.

ArcaEx would process orders designated as identity orders no differently from other orders sent to ArcaEx. PCXE Rules 7.36 (Order Ranking and Display) and 7.37 (Order Execution) set forth the order interaction process for orders entered on the ArcaEx. Orders designated as identity orders would be ranked, displayed, and executed under the same criteria (under PCXE Rules 7.36 and 7.37) as anonymous orders in the ArcaEx. ArcaEx has no capacity limitations on the number of identity orders that could be displayed for an individual security.

The purpose of the identity order feature is to provide more visibility to those ETP Holders who may choose to identify their ETPIDs with their trading interest in a particular security. The PCX believes that the identity order feature would benefit investors by increasing market transparency in an automatic execution venue such as ArcaEx. By providing a mechanism by which ETP Holders could display their identities, ArcaEx hopes to attract more orders and contribute more liquidity to the market while adding to the transparency of trading interest.

III. Summary of Comments

As noted above, the Commission received one comment in response to the proposed rule change, which supported the proposal. The commenter believed that allowing ETP Holders to choose to display their orders with their unique ETPIDs promotes market transparency in general and is therefore consistent with a key National Market System goal. The commenter also noted that the ability to trade on ArcaEx on an attributed or anonymous basis would be similar to the ability of participants in the Nasdaq Stock Market, Inc's SuperMontage to trade on an attributed basis using their own MPID or on an anonymous basis using the SIZE feature.

IV. Discussion

To facilitate the identity order feature, the PCX has proposed to amend PCXE Rules 7.7(b) and 7.36(b). Currently, PCXE Rule 7.7(b) prohibits an ETP Holder from transmitting information ''regarding a bid, offer or other indication of an order'' to a non-ETP Holder until the bid, offer or other indication of information has been disclosed and permission to transmit the information has been obtained from the originating ETP Holder. Conversely, PCXE Rule 7.36(b) provides for anonymity in displaying orders in the Display Order Process [6] of the ArcaEx Book.[7]

The Exchange wishes to revise PCXE Rule 7.36(b) to state that except as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48598 (October 7, 2003), 68 FR 59663.

[4] *See* letter dated November 21, 2003, from Duncan L. Niederauer, Managing Director, Spear, Leeds and Kellogg to Jonathan G. Katz, Secretary, Commission.

[5] *See* PCXE Rule 1.1(yy) for the definition of ''User.''

[6] *See* PCXE Rule 7.36(a)–(c) for a discussion of the Display Order Process.

[7] *See* PCXE Rule 1.1(a) for a definition of Arca Book.

provided by PCXE Rule 7.7(b), all orders at all price levels will continue to be displayed on an anonymous basis. Therefore, a User could choose to either display its ETPID or remain anonymous.

Additionally, the Exchange proposes to revise PCXE Rule 7.7(a)[8] to reflect the proposed changes to PCXE Rules 7.7(b) and 7.36(b).

In the proposed rule change, the PCX represented that identity orders would be centrally processed for execution by computer, subject to the same price, time, and priority rules that govern the automated matching and execution of orders. According to the PCX, the use of identity orders on ArcaEx would not confer ETP Holders any time and place advantages over other orders on ArcaEx, and would therefore comply with the requirements and policy concerns underlying section 11(a) of the Act.[9] The PCX also represented that the proposed rule change would not alter the responsibilities of market makers and would not change the manner in which market maker orders are processed and executed within ArcaEx. Finally, the PCX represented that PCXE has developed procedures to maintain a high level of surveillance of ETP Holders and their use of specific order types, including mechanisms to help detect manipulation of prices on ArcaEx, through the use of identity orders or otherwise.

Based, in part, on the PCX's representations, the Commission is approving the PCX's introduction of the identity order feature. The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act[10] and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the identity order feature is consistent with section 6(b)(5) of the Act,[12] which requires, among other things, that the Exchange's rules be designed to perfect the mechanisms of a free and open market and, in general, to protect investors and the public interest. The Commission believes that providing ETP Holders with the ability to display their identity on an order-by-order basis will add to market transparency by offering market participants the option of anonymity in placing orders on the PCX.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–2003–46), is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30940 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

[8] PCXE Rule 7.7(a) provides that ''[t]he names of ETP Holders bidding for or offering securities through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP. No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.''

[9] 15 U.S.C. 78k(a).

[10] 15 U.S.C. 78f(b).

[11] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48875; File No. SR–Phlx–2003–75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt Commentary .04 of Its Rule 1064 To Allow the Concurrent Representation of Hedging Stock Positions With Option Facilitation Orders in the Trading Crowd

December 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 17, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Commentary .04 to Phlx Rule 1064, Crossing, Facilitation, and Solicited Orders, to allow the concurrent representation of hedging stock positions with option facilitation orders in the trading crowd (''Stock Tied Up Orders''). The text of the proposed rule change is set forth below. Text in italics indicates material to be added.

* * * * *

Crossing, Facilitation and Solicited Orders

Rule 1064. (a)–(c) No change.

(d) No member organization or person associated with a member or member organization who has knowledge of the material terms and conditions of a solicited order, an order being facilitated, or orders being crossed, the execution of which are imminent, shall enter, based on such knowledge, an order to buy or sell an option for the same underlying security; an order to buy or sell the security underlying such class; or an order to buy or sell any related instrument until (i) the terms and conditions of the order and any changes in the terms of the order of which the member, member organization or person associated with a member or member organization has knowledge are disclosed to the trading crowd, or (ii) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. For purposes of this Rule, an order to buy or sell a ''related instrument'' means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

Commentary:

.01–.03. No change.

.04. Rule 1064(d) does not prohibit a member or member organization from buying or selling a stock position following receipt of a customer's options order but prior to announcing such order to the trading crowd, provided that:

(a) such member or member organization shall create a written record that it is engaging in a ''Stock Tied Up Order'' (as described below) prior to buying or selling any shares of the underlying stock in the hedging stock position;

(b) such hedging stock position is: (i) comprised of the same underlying stock applicable to the option order; (ii) announced concurrently with the option order in the crowd; (iii) offered to the crowd in its entirety; and (iv) offered, at the stock execution price received by the member organization introducing the order, to any option crowd participant who has established parity or priority for the related options;

(c) the hedging stock position does not exceed the options order on a delta basis; and

(d) the hedging stock order is transacted promptly upon receipt of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

option order and, if brought to the Exchange, is brought without undue delay to the crowd. Crowd participants may participate in the option transaction without participating in the hedging stock position. Combination option and stock positions offered in reliance upon this Commentary .04 shall be referred to as ''Stock Tied Up Orders.''

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx represents that the purpose of the proposed rule change is to expressly adopt into Exchange rules concerning the handling of certain option orders, Stock Tied Up Orders, to bring clarity to the practice of representing hedging stock positions in conjunction with option orders in the trading crowd.

In a Stock Tied Up Order, Exchange members would be permitted to hedge a customer options order with the underlying security, and then forward the customer order and hedging stock position to a Floor Broker with instructions to represent the customer order together with the hedging stock position in the underlying security to the options crowd. Under the proposal, the trading crowd would have the choice to participate in the option portion of the transaction or both the option and stock hedging position.

The proposal would also include a number of conditions which must be satisfied both prior to the time a Stock Tied Up Order is represented to the options trading crowd, and concurrently with the representation of a Stock Tied Up Order in the trading crowd.

Currently, Exchange market participants trading options employ a number of strategies that involve multiple securities, including non-option components. For example, Exchange Rule 1066 permits Exchange members to engage in the trading of spread [3] and combination [4] orders, as well as synthetic options.[5] The Stock Tied Up Order would also include an option component and a stock component.

The proposed rule would require members and member organizations to satisfy certain conditions prior to representing Stock Tied Up Orders in the crowd. First, members or member organizations would be required to create a written record that it is engaging in a Stock Tied Up Order prior to buying or selling any shares of the underlying stock in the hedging stock position. The Exchange states that the purpose of this provision is to create a record to ensure that stock trades would be appropriately associated with the related options order. The Exchange believes that this requirement should enable the Exchange to surveil for compliance with the requirements of proposed Commentary .04(b) of Phlx Rule 1064, as discussed below, by identifying the specific purchase or sell orders relating to the hedging stock position.

Secondly, proposed Commentary .04(b) of Phlx Rule 1064 would require that members and member organizations that have decided to engage in Stock Tied Up Orders for representation in the trading crowd would have to ensure that the hedging stock position associated with the Stock Tied Up Order is comprised of the same underlying stock applicable to the option order. For example, if the option component of the Stock Tied Up Order overlies XYZ stock, then the hedging stock position associated with the order would have to be XYZ stock. The Exchange states that the purpose of this provision is to ensure that the hedging stock position would be for the same stock as the overlying option, thus allowing crowd participants who may be considering participation in a Stock Tied Up Order to adequately evaluate the risk associated with the option as it relates to the actual underlying stock. Occasionally, crowd participants hedge option positions with stock that is related to the option, such as the stock of an issuer in the same industry, but not the actual stock associated with the option. The proposed rule change would not allow such a ''related'' hedging stock position, but would require the hedging stock position to be the actual security underlying the option.

The proposal would require that the hedging stock position be announced concurrently with the option order in the crowd, offered to the crowd in its entirety, and offered at the stock execution price received by the member organization introducing the order to any option crowd participant who has established parity or priority for the related options. The Phlx states that the purpose of these requirements is to ensure that the hedging stock position represented to the crowd would be a good faith effort to provide crowd participants with the same opportunity as the member or member organization introducing the Stock Tied Up Order to compete for the option order. For example, if the member or member organization introducing the Stock Tied Up Order were to offer 1,000 XYZ option contracts to the crowd (overlying 100,000 shares of XYZ stock) and concurrently offers only 30,000 shares of the underlying stock, crowd participants might only be willing or able to participate in 300 of the option contracts offered, if the hedging stock position cannot be obtained at a price as favorable as the stock hedging position offering price, if at all. The Exchange states that the effect of this would be to place the crowd at a disadvantage relative to the introducing member firm for the remaining 700 option contracts

[3] A spread order is an order to buy a stated number of option contracts and to sell the same number of option contracts, in a different series of the same class of options. In the case of adjusted stock option contracts, a spread order need not consist of the same number of put and call contracts if such contracts both represent the same number of underlying shares or foreign currency at option, in a different series of the same class of options. *See* Exchange Rule 1066(f)(1).

[4] A combination order is an order involving a number of call option contracts and the same number of put option contracts in the same underlying security and representing the same number of shares at option (if the underlying security is a stock or Exchange-Traded Fund Share) or the same number of foreign currency units (if the underlying security is a foreign currency). A combination order includes a conversion (generally, buying a put, selling a call, and buying the underlying stock or Exchange-Traded Fund Share) and a reversal (generally, selling a put, buying a call, and selling the underlying stock or Exchange-Traded Fund Share). In the case of adjusted option contracts, a combination order need not consist of the same number of shares at option. *See* Exchange Rule 1066(f)(3).

[5] A synthetic option order is an order to buy or sell a stated number of option contracts and buy or sell the underlying stock or Exchange-Traded Fund Share in an amount that would offset (on a one-for-one basis) the option position. For example:

(i) Buy-write: An example of a buy-write is an order to sell one call and buy 100 shares of the underlying stock or Exchange-Traded Fund Share.

(ii) Synthetic put: An example of a synthetic put is an order to buy one call and sell 100 shares of the underlying stock or Exchange-Traded Fund Share.

(iii) Synthetic call: An example of a synthetic call is an order to buy (or sell) one put and buy (or sell) 100 shares of the underlying stock or Exchange-Traded Fund Share. *See* Exchange Rule 1066(g).

in the Stock Tied Up Order, and thus create a disincentive for the crowd to bid or offer competitively for the remaining 700 option contracts. The Exchange believes that the requirement to present the hedging stock position concurrently with the option order in the crowd and offered to the crowd in its entirety at the stock execution price received by the member organization introducing the order should ensure that the crowd would be competing on a level playing field with the introducing member or member organization to provide the best price to the customer.

In addition, the proposal would require that the hedging stock position not exceed the options order on a delta basis.[6] For example, in the situation where a Stock Tied Up Order involves the simultaneous purchase of 100 shares of XYZ stock and the sale of 1 XYZ call contract (known as a ''buy-write''), and the delta of the option is 100, it would be considered ''hedged'' by 100 shares of stock. Accordingly, the proposed rule would not allow the introducing member firm to purchase more than 100 shares of stock in the hedging stock position. The Exchange believes that it is reasonable to require that the hedging stock position be in amounts equivalent to the size of the related options order on a delta basis, and not for a greater number of shares of stock. The Exchange believes that the proposed rule change would support its view that the member or member organization introducing the Stock Tied Up Order be guided by the notion that any excess hedging activity could be detrimental to the eventual execution price of the customer order. Consequently, while delta estimates may vary slightly, the introducing member or member organization would be required to assume hedging stock positions not to exceed the equivalent size of the options order on a delta basis.

The proposed rule change would also require that the hedging stock order be transacted by the member or member organization introducing the Stock Tied Up Order promptly upon receipt of the option order, and, if brought to the Exchange, such order would be required to be brought without undue delay to the crowd. The Exchange believes that in many circumstances the member or member organization introducing the Stock Tied Up Order would best serve the interest of the customer by establishing the hedging stock position over a brief period of time, rather than by way of a block-sized market order that could be of high-impact to the stock price. However, the Exchange states that the ''prompt'' requirement of the proposed rule is intended to ensure that this working period be brief so that the hedging stock position could be brought to the Floor under optimal circumstances for crowd participants to compete most effectively. To accomplish this, the Exchange believes that the hedging stock position must be reasonably related to the price of the option order upon receipt of the option order. In the event a delay does occur and the stock price becomes unattractive as a hedge, the proposed rule would provide that the crowd participants could elect to participate in the option order without participating in the hedging stock position.

Finally, while the particular circumstances surrounding each transaction on the Exchange's options floor are different, the Exchange does not believe, as a general proposition, that the Stock Tied Up Order would be inherently harmful or detrimental to customers. The fact that the parties to such a trade end up fully hedged may contribute to the best execution of the orders, and, in any event, participants continue to be governed by, among other things, their best execution responsibilities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by establishing rules governing Stock Tied Up Orders, which include specific requirements and procedures to be followed prior to and during representation of such orders in the crowd.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. In particular, the Commission seeks commenters' specific views on whether the proposed rule change is consistent with the Act. What would be the impact under the proposed rule change of allowing Phlx members to hedge large options orders while avoiding pressures on the market for the underlying securities that can result from the reporting of such options transactions to the tape? Would the proposed rule change violate prohibitions on front running? Should the proposed rule change provide specific standards to determine when a member's hedging stock position does not exceed the options order on a delta basis?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Phlx–2003–75. This file number

[6] The price of an option is not completely dependent on supply and demand, nor on the price of the underlying security. Specialists and ROTs price options based on basic measures of risk as well. One of these such measures, delta, is the rate of change in the price of an option as it relates to changes in the price of the underlying security. The delta of an option is measured incrementally based on movement in the price of the underlying security. For example, if the price of an option increases or decreases by $1.00 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 100. If the price of an option increases or decreases by $.50 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 50. *See, e.g.*, Securities Exchange Act Release No. 45575 (March 15, 2002), 67 FR 13395 (March 22, 2002) (SR–Phlx–2001–25).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to file number SR–Phlx–2003–75 and should be submitted by January 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30941 Filed 12–15–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[CVP SBIC, L.P.; License No. 09/79–0449]

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that CVP SBIC, L.P., 1010 El Camino Real, Suite 250, Menlo Park, CA 94025, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and § 107.730, Financings Which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). CVP SBIC, L.P. proposes to provide equity/debt security financing to Telcontar. The financing is contemplated for national sales force expansion and working capital.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Cardinal Venture Partners, L.P. and Cardinal Venture Affiliates, L.P., Associates of CVP SBIC, L.P., collectively own more than ten percent of Telcontar.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: November 20, 2003.

Jeffrey Pierson,

Associate Administrator for Investment.

[FR Doc. 03–31011 Filed 12–15–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4557]

Culturally Significant Objects Imported for Exhibition Determinations: ''Arcadia and Metropolis: Masterworks from the Neue Nationalgalerie Berlin''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Arcadia and Metropolis: Masterworks from the Neue Nationalgalerie Berlin,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Neue Galerie New York, New York, NY, from on or about March 15, 2004 until on or about June 8, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 9, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31003 Filed 12–15–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4558]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Glory of Baroque Dresden Exhibition''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended by Delegation of Authority No. 236–3 of August 28, 2000 [65 FR 53795], and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibit, ''The Glory of Baroque Dresden Exhibition,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the objects at the Mississippi Arts Pavilion, Jackson, Mississippi, from on or about March 1, 2004, to on or about September 6, 2004, and possible additional venues yet to be determined is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: December 10, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–31004 Filed 12–15–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34439]

Union Pacific Railroad Company and Stillwater Central Railroad Company—Joint Relocation Project Exemption—Fort Sill, OK

On November 25, 2003, Union Pacific Railroad Company (UP) and Stillwater Central Railroad Company (SLWC) filed a verified notice of exemption under 49 CFR 1180.2(d)(5) to participate in a joint project involving the relocation of certain rail lines of UP near the Fort Sill Military Reservation (FSMR) at Fort Sill, OK. The transaction was scheduled to be consummated on or after December 2, 2003.

The purpose of the joint relocation project is to permit the reconstruction of the wye tracks providing access to FSMR to accommodate larger rail cars. To allow the needed reconstruction, UP must remove certain existing main line track and relocate its operations over that track to a parallel line of SLWC. Thus, the joint relocation project notice covers the following actions:

(1) SLWC will grant trackage rights to UP (including rights to serve FSMR) over SLWC's line extending from SLWC milepost 624.65 near Fort Sill, OK, to SLWC milepost 628.0 near Lawton, OK, a distance of approximately 3.35 miles; and

(2) UP will abandon and remove approximately 1.04 miles of its line between UP milepost 48.56 and UP milepost 49.60 near Fort Sill, OK.

UP and SLWC state that the proposed project will not disrupt service to shippers. They also state that the relocated line and trackage rights will not involve an expansion of service by either carrier into a new territory, but rather, will enable UP to continue to serve FSMR once its line is abandoned and removed.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.*, 9 I.C.C.2d 1208 (1993), *aff'd sub nom. Detroit/Wayne County Port Authority* v. *ICC,* 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

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).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) 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. 34439, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179 and Craig R. Richey, Stillwater Central Railroad Company, 315 West 3rd Street, Pittsburg, KS 66767.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: December 9, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–30894 Filed 12–15–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2003–63]

Required Notice to Customers Making Payment by Check

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice.

SUMMARY: In a continuing effort to operate more efficiently, the Office of Thrift Supervision (OTS) has implemented a new system for processing checks it receives.

DATES: Effective October 31, 2003.

FOR FURTHER INFORMATION CONTACT: Howard Verp, Operating Accountant, (202) 906–6427; or Gina March, Operating Accountant, (202) 906–7247, Financial Operations, Information Systems, Administration & Finance, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS receives checks from customers for examination fees, application filings, conference registrations, security filings, and other purposes. The Bureau of Public Debt's Administrative Resource Center (ARC) now processes all checks received for OTS. ARC utilizes a Financial Management Service system to convert each check received for OTS into an electronic fund transfer.

The following guidelines apply:

Authorization to Convert the Check: If a customer submits a check to OTS to make a payment, the check will be converted to an electronic fund transfer. ''Electronic fund transfer'' is the term used to refer to the process by which OTS electronically instructs the customer's financial institution to transfer funds from the customer's account to OTS's account, rather than processing the check. By submitting a completed, signed check to OTS, the customer authorizes OTS to copy the check and to use the account information from the check to make an electronic fund transfer from the customer's account for the same amount as the check. If the electronic fund transfer cannot be processed for technical reasons, the customer authorizes OTS to process the check.

Insufficient Funds: The electronic fund transfer from the customer's account will usually occur within 24 hours, which is less time than when a check is normally processed. Therefore, the customer should ensure that there are sufficient funds available in the customer's checking account when the customer sends OTS the check. If the electronic fund transfer cannot be completed because of insufficient funds, OTS will try to make the transfer up to two times before contacting the customer.

Transaction Information: The electronic fund transfer from the customer's account will appear on the account statement the customer receives from the customer's financial institution. However, the transfer may be in a different place on the statement from where the customer's checks normally appear. For example, it may appear under ''other withdrawals'' or ''other transactions.'' The customer will not receive the original check back from the financial institution. For security reasons, OTS will destroy the original check, but OTS will keep a copy of the check for record keeping purposes.

Customer Rights: The customer should contact the financial institution

immediately if the customer believes that the electronic fund transfer reported on the account statement was not properly authorized or is otherwise incorrect. The Electronic Fund Transfer Act provides consumers with protections for unauthorized or incorrect electronic fund transfers.

Dated: December 9, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–30942 Filed 12–15–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Call for Artists To Apply for the United States Mint's Artistic Infusion Program

SUMMARY: The United States Mint is inviting artists to participate in its new Artistic Infusion Program to help design United States coins and medals. The Artistic Infusion Program has been created to enrich and invigorate the design of United States coins and medals by developing a pool of up to 20 professional artists (Master Designers) and up to 20 college and graduate-level art students (Associate Designers) in sculpture, engraving, drawing, graphic design, painting, printmaking and other visual arts, who will be invited to create and submit new designs for selected coin and medal programs throughout the year.

The United States Mint encourages applications from talented artists, representing diverse backgrounds and a variety of interests reflecting those of the American people, who will look at coin design in new ways. Artists selected to participate in the program will be paid honoraria for their work, and those whose designs are used for certain coins and medals will be named as the designer in historical documents, including certificates of authenticity and promotional materials. Most importantly, the program provides the Nation's most gifted artists with the opportunity to contribute beautiful designs to coins that will be enjoyed by all Americans.

The National Endowment for the Arts has partnered with the United States Mint to evaluate artists' applications. Submissions will be evaluated on artistic excellence and merit.

An orientation session and designer symposium will be held for artists selected to participate in the program (attending at the Mint's expense) on Thursday and Friday, February 19 and 20, 2004, at the United States Mint in Philadelphia to learn about the history of United States coin and medal design, the coin making process and upcoming design opportunities.

Please Note: At this time, the Artistic Infusion Program is limited to coin and medal design (*i.e.*, drawings) and does not encompass the execution (sculpting and engraving) of designs. The United States Mint Sculptor/Engravers will model designs created by the Artistic Infusion artists.

Application Deadline: January 9, 2004.

Receipt of Applications: Artists who are U.S. citizens should submit a completed application that will include samples of their work. A design exercise for applicants will also be required. Interested artists are required to use the ''Call for Artists Application Packet,'' which includes program details, eligibility requirements, artistic criteria and detailed application guidelines. The packet is available on the United States Mint's website at *www.usmint.gov,* or by contacting the United States Mint at (202) 354–7727 or *art@usmint.treas.gov.*

Dated: December 8, 2003.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 03–30924 Filed 12–15–03; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Tuesday,
December 16, 2003

Part II

Department of Health and Human Services

Health Resources and Services Administration

42 CFR Part 102

Smallpox Vaccine Injury Compensation Program: Administrative Implementation; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 102

RIN 0906–AA61

Smallpox Vaccine Injury Compensation Program: Administrative Implementation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Interim final rule.

SUMMARY: The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA), authorizes the Secretary of Health and Human Services (the Secretary), to establish the Smallpox Vaccine Injury Compensation Program (''the Program''). This program is designed to provide benefits and/or compensation to certain persons harmed as a direct result of receiving smallpox covered countermeasures, including the smallpox vaccine, or as a direct result of contracting vaccinia through certain accidental exposures. In addition, the Secretary may provide death benefits to certain survivors of individuals who died as the direct result of these injuries.

On August 27, 2003, the Secretary published an interim final rule that set out a Smallpox (Vaccinia) Vaccine Injury Table (''the Table''). The table includes adverse effects (including injuries, disabilities, conditions, and deaths) within specific time periods that shall be presumed to result from the receipt of, or exposure to, the smallpox vaccine. The Secretary will use this table, as well as the procedures set out in this regulation, in deciding whether persons are eligible to receive benefits under the program.

In this interim final rule, the Secretary is setting out the administrative policies, procedures, and requirements governing the program, as authorized by the SEPPA. The Secretary is seeking public comment on this interim final rule.

DATES: This regulation is effective on December 16, 2003. Written comments must be submitted on or before February 17, 2004. The Secretary will consider the comments received and will decide whether to amend the current procedures and requirements based on such comments.

ADDRESSES: All written comments concerning this interim final rule should be submitted to the Director, Smallpox Vaccine Injury Compensation Program, Special Programs Bureau, Health Resources and Services Administration, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857. Express and courier mail should be sent to the Director, Smallpox Vaccine Injury Compensation Program, Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814. Electronic comments should be sent to *smallpox@hrsa.gov.* Comments received will be available for public inspection at the Smallpox Vaccine Injury Compensation Program Office, Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814, between the hours of 8:30 a.m. and 5 p.m. on Federal government workdays.

FOR FURTHER INFORMATION CONTACT: Paul T. Clark, Director, Smallpox Vaccine Injury Compensation Program, telephone 1–888–496–0338. This is a toll-free number. Electronic inquiries should be sent to *smallpox@hrsa.gov.* Interested parties may also wish to consult the program's Web site at *http://www.hrsa.gov/smallpoxinjury.*

SUPPLEMENTARY INFORMATION:

Background

Before it was eradicated, smallpox (variola) was a serious illness that manifested as outbreaks of either variola major with death rates of greater than 20% or variola minor with death rates of almost 1%. The smallpox (vaccinia) vaccine (referred to in this rule as the ''smallpox vaccine'') contains a live vaccinia virus that induces immunity to smallpox infection, but does not lead to variola infection or disease. Vaccinia virus is an orthopox type virus that is different from, but related to, the smallpox virus. The smallpox vaccine was an essential tool for the successful global eradication of the smallpox virus, announced by the World Health Organization in 1980. Despite such eradication, concern exists that terrorists may have access to the smallpox virus.

On December 13, 2002, the President announced a plan to protect the population of the United States against the threat of a possible smallpox attack. This plan was based on heightened concerns, in the wake of the attacks of September and October 2001, that terrorists may have access to the smallpox virus and may attempt to use it against the population of the United States and government facilities abroad. Under this plan, which the Secretary is actively working to implement, State and local governments have formed smallpox emergency response plans to facilitate the provision of critical services to the population of the United States in the event of a smallpox virus attack.

To further the President's plan, the Secretary issued a Declaration Regarding Administration of Smallpox Countermeasures on January 24, 2003 (68 FR 4212). This Declaration was issued pursuant to statutory authority, 42 U.S.C. 233(p)(2)(A), which was enacted by the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135. In this Declaration, the Secretary stated that ''a potential bioterrorist incident makes it advisable to administer, on a voluntary basis, covered countermeasures specified * * * for prevention or treatment of smallpox or control or treatment of adverse events related to smallpox vaccination, to [specified] categories of individuals * * *.'' The specific ''covered countermeasures'' described in the Declaration are smallpox vaccines, cidofovir and its derivatives, and Vaccinia Immune Globulin. The categories of persons to whom the Secretary recommended the administration of such covered countermeasures, on a voluntary basis, included certain health care workers, certain public safety personnel, other members of smallpox emergency response plans identified by State or local government entities or the Department of Health and Human Services, and certain personnel associated with specific Federal facilities abroad. The Secretary recommended that such persons receive the smallpox vaccine to ensure the immediate mobilization of smallpox emergency response personnel who would provide critical services to the population of the United States in the event of a smallpox virus attack. The Secretary's Declaration became effective on January 24, 2003, and will remain effective until January 23, 2004, unless the Secretary extends or shortens that time period by amendment.

Under the Smallpox Vaccine Injury Compensation Program authorized by the SEPPA, certain persons may be entitled to benefits (defined as benefits and/or compensation) for covered injuries, described below, suffered as a direct result of the administration of smallpox covered countermeasures (including the smallpox vaccine) or accidental vaccinia inoculation. Specifically, the SEPPA authorizes the Secretary to make the benefits available to two categories of eligible persons who sustained covered injuries, provided

they meet the legal requirements (*e.g.*, filing deadlines).

The first category, ''smallpox vaccine recipients,'' includes certain persons who volunteer for, and are selected to be members of, a smallpox emergency response plan, are vaccinated with a smallpox vaccine under such a plan, and sustain covered injuries. The second category, vaccinia contacts, includes certain persons who have covered injuries as the direct result of exposure to vaccinia through contact with certain persons who received the smallpox vaccine or with the contacts of such recipients. In addition, if a person in either category dies, his or her survivors or his or her estate may be eligible for selected benefits under this program in certain circumstances.

The benefits available under the program include compensation for medical care, lost employment income, and survivor death benefits. To be considered for program benefits, requesters (*i.e.*, smallpox vaccine recipients, vaccinia contacts, survivors, or the representatives of the estates of deceased smallpox vaccine recipients or vaccinia contacts), or persons filing on their behalf as their representatives, must file a Request Form and the documentation required under this regulation to show that they are eligible.

As mandated under the SEPPA, the Secretary is herein, at 42 CFR part 102, establishing the procedures and requirements governing the program. At this time, the Secretary is seeking public comments on these procedures and requirements.

Summary of the Regulation

Summary of Available Benefits and Secondary Nature of Benefits (§ 102.2, § 102.84)

The benefits available under this program are medical benefits, benefits for lost employment income, and survivor death benefits.

As explained in § 102.2(b), the SEPPA establishes that the government is a secondary payor for most benefits available under the program. Thus, benefits paid under this program are generally secondary to any obligation of any third-party payor, described in § 102.3(aa), to pay for or provide such benefits. Requesters generally must provide the names of all other third-party payors that have already provided benefits, that are expected to do so in the future, or that may have a duty to do so. These payers include, but are not limited to: insurance companies, workers' compensation programs, the Federal Employees' Compensation Act (FECA) Program, or the Public Safety Officers' Benefit (PSOB) Program, a program within the United States Department of Justice that provides payments to public safety officers and their survivors, including death payments for officers killed in the line of duty. If such a third-party payor has paid for or provided the type of benefits requested under this program, the Secretary will only pay such benefits in an amount necessary to supplement the payments already provided. For example, if a requester were otherwise entitled to $10,000 in medical benefits from this program and the requester's health insurance company (a third-party payor) has paid $5,000 for the covered medical benefits and services, the program would pay the requester $5,000 (the amount the requester is entitled to under this program, reduced by the amount the requester is entitled to from third-party payors). As explained later in the preamble, upon payment of benefits under the Smallpox Vaccine Injury Compensation Program, the Secretary will be subrogated to the rights of the requester and may assert a claim against any third-party payor with a legal or contractual obligation to pay for, or provide, such benefits.

Description of Eligible Requesters (§ 102.10(a))

(1) *Smallpox vaccine recipients,* as defined in § 102.3(y).

A person who has received a smallpox vaccine is only considered a ''smallpox vaccine recipient,'' for purposes of this program, if he or she meets the criteria described in this regulation. Specifically, he or she must have been in a covered occupation (including health care workers, law enforcement officers, public safety personnel, and supporting personnel), received a smallpox vaccine as a participant in an approved smallpox emergency response plan, and sustained a covered injury, described later in this preamble. The exact requirements for smallpox vaccine recipients are set forth in § 102.3(x). For example, this regulation provides that, in order to be eligible, a smallpox vaccine recipient must have received the smallpox vaccine between January 24, 2003, and January 23, 2004, unless the period is extended by the Secretary. In order to be covered by the program, a smallpox vaccine recipient must also have volunteered for and been selected to be a member of a smallpox emergency response plan before the time that the Secretary publicly announces that an active case of smallpox has been identified anywhere in the world. For this reason, persons who become members of smallpox emergency response plans in order to respond to a case of smallpox that has already occurred will not be considered ''smallpox vaccine recipients.'' Likewise, persons who receive the smallpox vaccine as members of the military or members of the public who receive the smallpox vaccine voluntarily, and not as part of an approved smallpox emergency response plan, are not entitled to benefits under the program.

(2) *Vaccinia contact,* as defined in § 102.3(bb).

The SEPPA imposes specific restrictions as to which persons who have contracted vaccinia from another person may be eligible for benefits under this program. The specific requirements pertaining to vaccinia contacts are set forth in § 102.3(bb). As explained in that section, vaccinia contacts are only eligible for benefits under this program if they can show that they contracted vaccinia as a result of contact with a person who either meets the definition of a smallpox vaccine recipient (except that the vaccine recipient does not need to sustain a covered injury) or who was accidentally inoculated by such a person. For this reason, if the source of a contact's exposure to vaccinia is a person who received a smallpox vaccine other than under an approved smallpox emergency response plan, the contact would not fall within the regulation's definition of a ''vaccinia contact'' and would not be eligible for benefits under the program. For example, the contacts of members of the military and State Department personnel who receive the smallpox vaccine for their employment, but not as part of an approved smallpox emergency response plan, would not be entitled to benefits under this program. Likewise, the contacts of members of the general public who receive the smallpox vaccine voluntarily, and not as part of an approved smallpox emergency response plan, would not be covered under this program. In addition, vaccinia contacts must have contracted vaccinia during the effective period of the Declaration (between January 24, 2003, and January 23, 2004, unless extended by the Secretary), or within 30 days after the end of such period, and must have sustained a covered injury.

(3) *Certain survivors of deceased smallpox vaccine recipients or vaccinia contacts,* as defined in § 102.3(z).

Categories of eligible survivors and the priority of such survivors to receive benefits from the program are discussed in the section of this preamble concerning death benefits (the only type of benefit survivors are eligible to receive).

(4) *Representatives of estates of deceased smallpox vaccine recipients or vaccinia contacts.*

Representatives of estates of deceased smallpox vaccine recipients or vaccinia contacts may file Request Packages with the program as long as they are seeking benefits on behalf of the deceased person's estate.

Benefits Available to Different Categories of Requesters (§ 102.30)

An eligible requester who is a smallpox vaccine recipient or a vaccinia contact may be entitled to receive either medical benefits or benefits for lost employment income or both as long as they provide the proper documentation. For example, such requesters must submit documentation showing that they have out-of-pocket reasonable and necessary medical expenses as a result of a covered injury or its health complications in order to receive medical benefits, and documentation showing that they lost employment income as a result of a covered injury or its health complications in order to receive benefits for lost employment income. Such documentation requirements are discussed later in this preamble.

An eligible requester who is the survivor of a deceased smallpox vaccine recipient or vaccinia contact may be entitled to receive a death benefit.

The estate of a deceased smallpox vaccine recipient or vaccinia contact may be eligible to receive medical benefits or benefits for lost employment income or both if such benefits were accrued during the deceased person's lifetime as a direct result of a covered injury or its health complications, but were not paid during the deceased person's lifetime. However, the estate would not be eligible to receive payments for benefits that were not accrued during the deceased person's lifetime. For example, the estate would not be entitled to benefits for projected lost employment income that the person might have accrued if he or she had not died.

Covered Injuries (§ 102.20—§ 102.21)

Covered injuries are defined in § 102.3(g) and set out in subpart C of this rule. Covered injuries are those injuries in smallpox vaccine recipients or vaccinia contacts that the Secretary determines are more likely than not (*i.e.*, by a preponderance of the evidence) the direct result of the administration of a covered countermeasure (including a smallpox vaccine) or of vaccinia acquired through accidental vaccinia inoculation. Because even survivors of, and representatives of estates of, deceased smallpox vaccine recipients and vaccinia contacts must demonstrate that the deceased person sustained a covered injury, a requester will not be deemed eligible for benefits under the program unless the Secretary determines that an eligible smallpox vaccine recipient or vaccinia contact sustained a covered injury.

One way that requesters can demonstrate that they sustained a covered injury is by demonstrating that they sustained an injury listed on the Smallpox (Vaccinia) Vaccine Injury Table (the table) within the required time interval, as set out in § 102.21. In accordance with the SEPPA, a smallpox vaccine recipient or vaccinia contact shall be presumed to have sustained a covered injury as the direct result of the administration of, or exposure to, the smallpox vaccine if the requester submits sufficient documentation demonstrating that he or she sustained an injury included on the table, with the onset of the first symptom or manifestation within the time interval specified on the table. The injury must also meet the table's definitions and requirements, set forth in § 102.21(b). In such circumstances, the Secretary will presume, solely for purposes of the program, that the smallpox vaccine recipient or vaccinia contact's injury was caused by the smallpox vaccine or exposure to vaccinia. Such a requester need not actually demonstrate that the vaccine (or the vaccinia contracted from accidental vaccinia inoculation) caused the underlying injury, only that an injury listed on the table was sustained and that it first manifested itself within the time interval listed.

In directing the Secretary to establish a table with such a presumption, Congress did not direct the Secretary to make this presumption conclusive. In the Secretary's view, it would be inconsistent with the purposes of the SEPPA to make this presumption absolutely conclusive. For this reason, based on his review of the submitted documentation and other relevant evidence, the Secretary may determine that an injury meeting the table requirements was more likely than not (*i.e.*, by a preponderance of the evidence) caused by other factors and was not caused by the smallpox vaccine or exposure to vaccinia (*e.g.*, if the Secretary determined that the medical records demonstrated that an individual's injury of encephalopathy was caused by a car accident that occurred post-vaccination and not by the smallpox vaccine or exposure to vaccinia). In these circumstances, which we expect to occur rarely, the Secretary could rebut the table presumption and decide that the requester may not be entitled to benefits under the program.

Requesters who believe they sustained an injury included on the table, but did not meet all the table requirements (*e.g.*, the first manifestation of the injury did not become apparent within the required time interval), or requesters who believe they sustained an injury not included on the table, may still be able to demonstrate that the injury is one that is covered under the program. In order to establish a covered injury, such requesters may need to submit sufficient relevant medical documentation (such as isolation of vaccinia from the injured part of the body) or scientific evidence (such as results of studies published in peer-reviewed medical literature). In order to establish a covered injury, the Secretary, upon review of this evidence, must conclude that, more likely than not, the injury was actually caused by the administration of a covered countermeasure or by vaccinia through accidental inoculation during the time periods set forth by law. In other words, in evaluating such claims, the Secretary will employ a preponderance of the evidence standard, taking into consideration all relevant medical and scientific evidence, including all relevant medical records. As provided under the SEPPA, this determination, as with all other actions by the Secretary under this Act, is not reviewable by any court.

Any injury that the Secretary considers minor is not a covered injury. For example, covered injuries do not include expected skin reactions or expected minor scarring at the vaccination or inoculation site. No benefits will be paid for these reactions, as stated in § 102.20(b).

Medical Benefits—Summary and Calculation (§ 102.31 and § 102.80)

Medical benefits that may be available under the program are described in § 102.31. They include payment(s) or reimbursement for medical services and medical items that the Secretary determines are reasonable and necessary for the diagnosis or treatment of a covered injury or its direct health complications (*sequelae*). Past, current, and expected future medical services and items may be included in medical benefits.

In making determinations about which medical services and items provided in the past were reasonable and necessary, the Secretary may consider whether those medical services and items were prescribed or recommended by a health care practitioner. In considering benefits for

future medical services and items, the Secretary will consider statements by health care practitioners with expertise in the medical issues involved (for example, a statement by a treating neurologist concerning services and items likely to be needed to address neurological issues) concerning those services and items that appear likely to be needed in the future to diagnose or treat the covered injury or its health complications.

In order for a requester to receive medical benefits for a health complication, the health complication must have resulted from the covered injury and not be more likely due to other factors or conditions. Examples of health complications include complications of a covered injury that occur as part of the natural course of the underlying disease, an adverse reaction to a prescribed medication or diagnostic test used in connection with a covered injury, or a complication of a surgical procedure used to treat the injury.

If a smallpox vaccine recipient or vaccinia contact dies before filing for, or being paid, benefits for the cost of medical services or items accrued during his or her lifetime as a result of a covered injury or its health complications, the deceased person's estate may be paid such medical benefits. Because such payments are for medical expenses accrued as a result of a covered injury while the injured person was alive, the cause of death does not have to be related to the covered injury for these medical benefits to be paid.

The calculation of medical benefits is described in § 102.80. There are no caps on medical benefits. However, the Secretary may limit the payment of such benefits to the amounts he considers reasonable for those services and items he considers reasonable and necessary. In addition, payment of medical benefits or reimbursement of costs for medical services and items by the program is secondary to the obligations of any third-party payor, such as the United States (except for payment of benefits under this program), State or local government entities, private insurance carriers, employers, or any other third-party payors that may have a statutory or contractual obligation to pay for or provide medical benefits.

When the Secretary has determined that the requester is eligible for medical benefits and that all of the documentation is available by which he can compute the amount, he will do the following, consistent with the calculations described in § 102.80:

(1) Determine which medical expenses that have been submitted are reasonable and necessary to diagnose or treat a covered injury or its health complications.

(2) Compute all those reasonable medical expenses, including medical services and items provided in the past, and anticipated future medical expenses.

(3) Deduct from his computation the total amount paid, or payable, by all other third-party payors. This will be the basis for the program's payment. For example: An eligible, injured individual incurred $5,000 in reasonable and necessary medical expenses. If the individual's insurance company paid $3,000, and the individual is responsible for the $2,000 balance (due to deductibles and co-payments), then the Secretary will pay a medical benefit of $2,000.

As explained elsewhere in the preamble, the Secretary may make a payment of medical benefits and later pursue such a payment from a third-party payor with an obligation to pay for or provide the medical services or items.

Lost Employment Income—Summary and Calculation (§ 102.32 and § 102.81)

Lost employment income benefits that may be available under the program are set out in § 102.32. The program will provide benefits for lost employment income (secondary to other benefits that may be available to the requester) based on the number of days of work that the injured person lost as a result of the covered injury or its health complications (including diagnosis and treatment). These benefits are a percentage of the employment income lost and are based on the number of eligible work days for which such income was lost. Employment income includes the injured person's gross employment income. The lost work days do not have to be consecutive, and partial days of lost work are included in the calculation. For example, if an individual's workday is eight hours and he or she missed four hours a day for doctors' appointments on two different days, the eight hours of work missed will be considered one total day of lost work. As described in § 102.32(c), a day in which an individual used paid leave (*e.g.*, sick leave or vacation leave) in order to be paid for lost work will not be considered a day for which employment income was lost and will not be used in calculating benefits for lost employment income. The only exception to this rule is in a case in which the injured person's employer restores the paid leave taken and puts the requester in the same position as if he or she had not used paid leave on the lost work day (*i.e.*, treats the employee as if he or she did not take paid leave by taking back the payments made when the leave was used and giving back the leave to the employee for future use).

Under the SEPPA, the program cannot pay for the first five days of lost employment income resulting from a covered injury or its health complications, unless the injured individual lost employment income for 10 or more work days (in which case, all of the lost work days will be included in the calculation). For this reason, if an individual lost a total of four days of employment income as a result of a covered injury, he or she will not be eligible for any benefits for lost employment income.

The calculation of benefits for lost employment income is described in § 102.81. The annual cap on benefits for lost employment income for a requester is $50,000. A requester may use documents such as pay slips, earning and leave statements, and other documents concerning the injured individual's salary and benefits, to document his or her employment income. The benefit terminates once the requester reaches the age of 65. Benefits that represent future lost employment income will be adjusted to account for inflation. It is important to remember that future lost employment income will be calculated based on an individual's employment income at the time the covered injury was sustained (except for the inflation adjustment provided for in this regulation) and will not be based on an individual's anticipated future employment income. The lifetime cap for this benefit is equal to the amount of the death benefit available under the PSOB Program in the same fiscal year in which the lifetime cap is reached (currently approximately $262,100, but subject to change). However, this lifetime limitation does not apply if the Secretary determines that an individual has a covered injury considered to be a total and permanent disability under section 216(i) of the Social Security Act. For this reason, a requester deemed to have a permanent and total disability by the Secretary may be eligible to receive up to $50,000 a year until he or she reaches the age of 65.

As with medical benefits, if a smallpox vaccine recipient or vaccinia contact dies before filing for, or being paid, benefits for lost employment income incurred during his or her lifetime as a result of a covered injury or its health complications, the representative of that person's estate may file for such benefits on behalf of the estate. Because this payment is made for loss of employment income that accrued while the injured person

was alive, the death does not have to be related to the covered injury for these benefits to be paid.

Once the Secretary has determined that he has all the information necessary to compute lost employment income, the calculation will be made as follows, as set out in § 102.81:

(1) If the eligible individual lost five days or fewer of employment income, then there will be no benefits for lost employment income.

(2) If the eligible individual lost six to nine days of employment income, then the Secretary will subtract five days from the number of lost work days; if the eligible individual lost 10 or more days of employment income, then every lost work day will be counted.

(3) The Secretary will multiply the injured individual's daily gross employment income (including income from self-employment) at the time of the covered injury by the number of lost work days (as computed above). This figure will be adjusted to account for inflation, as appropriate.

(4) The Secretary will compute 75% of the lost employment income if the injured individual had one or more dependents (at the time of the covered injury) or 66 2/3% of the lost employment income if there were no dependents (at the time of the covered injury). This calculation will serve as the basis for the lost employment income benefit.

(5) The amount of payment will be reduced by any benefit that the requester is entitled to receive from a third-party payor (*e.g.*, a workers' compensation program). However, the Secretary may make a payment of lost employment income and later pursue such a payment from a third-party payor with an obligation to pay for or provide the benefit (*e.g.*, the Secretary can pay a benefit for lost employment income to a requester with a claim pending in a State workers' compensation program, and then has a right to recover such a payment from the State if its program determines that such a benefit is due the requester).

(6) The payments made will be subject to an annual cap of $50,000. The benefits paid in lost employment income will be subject to a lifetime cap, as discussed above, unless the Secretary determines that a requester has a covered injury considered to be a total and permanent disability under section 216(i) of the Social Security Act.

No State law workers' compensation lien may be maintained on any benefit for lost employment income paid under this program.

Death Benefits—Summary and Calculation (§ 102.11, § 102.33, and § 102.82)

Certain survivors of smallpox vaccine recipients or vaccinia contacts who died as a direct result of a covered injury or its health complications may be eligible for death benefits, as set out in § 102.11 (eligible survivors and their priority to receive death benefits), § 102.33 (general description of death benefits) and § 102.82 (calculation of death benefits).

The SEPPA provides that death benefits under this program may be available under two different calculations. The ''standard calculation'' is a lump-sum payment to eligible survivors and is described in § 102.82(c). In general, this method is based on the death benefit available under the PSOB Program. The ''alternative calculation'' is only available to surviving dependents who are younger than the age of 18, as described in § 102.82(d). This method is based upon the deceased person's employment income at the time of the covered injury.

Eligible Survivors and Priorities for Receiving Death Benefits

With limited exceptions, the Smallpox Vaccine Injury Compensation Program follows the requirements of the PSOB Program with respect to the categories of eligible survivors (known in the PSOB Program as beneficiaries) and the order of priority for payments of death benefits to them. The order of priority for survivors to receive death benefits under the program is subject to changes made in the future under the PSOB Program concerning eligible survivors and their priority to receive death benefits.

Currently, the categories of eligible survivors under the PSOB Program are as follows: (1) Surviving spouses; (2) surviving eligible children; (3) individuals designated by the deceased person as the beneficiaries under the deceased person's most recently executed life insurance policy; and (4) surviving parents. Such survivors, as defined under the PSOB Program, are also eligible survivors under this program. Currently, a surviving child is considered eligible under the PSOB Program if he or she is an individual who is a natural, illegitimate, adopted, or posthumous child, or stepchild, of the deceased person, and is 18 years of age or younger, or between 19 and 23 years of age and a full-time student, or is over 18 years of age and incapable of self-support because of physical or mental disability.

The SEPPA included two additional categories of survivors under this program who are not eligible survivors under the PSOB Program: (5) Legal guardians of deceased minors without surviving parents; and (6) surviving dependents who are younger than the age of 18 (some of whom may also fall within the category of surviving eligible children). As discussed below, special criteria apply to the final category of eligible survivors.

Under current practices, in the event that the deceased eligible individual is survived by a spouse and eligible children, the spouse will receive 50% of the death benefit and the children will divide the remaining 50% equally. If there are no surviving eligible children, then the spouse receives the entire benefit; if there is no surviving spouse, then the children divide the benefit in equal shares. In the event that the deceased injured individual has no surviving spouse or children, the individual designated by the deceased individual as the beneficiary under his or her most recently executed life insurance policy will receive the death benefit. If there is no life insurance policy or no surviving designated beneficiary under such a policy, the parents will divide the death benefit in equal shares. If none of these categories of survivors exists, the legal guardian of a deceased minor (who was a smallpox vaccine recipient or vaccinia contact) with no living parent will receive the death benefit, if applicable. As explained in § 102.11(b)(5), surviving dependents younger than the age of 18 will have the same priority as surviving eligible children.

Only the legal guardians of persons qualifying both as surviving eligible children under the PSOB Program and as dependents younger than the age of 18 can choose between a proportional death benefit under the standard and the alternative methods of payment. Survivors eligible under the PSOB Program's categories of survivors (*e.g.*, spouses, parents, certain insurance designees, and surviving eligible children) who do not qualify as dependent minors are only covered under the standard calculation. Dependents who are minors and who do not qualify under another category of eligible survivors (for example, eligible surviving children of the deceased) are only covered by the alternative method of payment.

Death Benefits Under the Standard Calculation, Described in § 102.82(c)

Under the ''standard calculation,'' the amount of the death benefit that can be paid under the program in a particular

fiscal year will equal the amount of the death benefit available under the PSOB Program in the same fiscal year (without regard to any reduction in PSOB Program death benefits due to a limitation in appropriations). The amount of the PSOB Program death benefit, which is subject to change, is currently approximately $262,100. Survivors who already collected, or are eligible to collect, death benefits under the PSOB Program are not eligible to receive Smallpox Vaccine Injury Compensation Program death benefits under the standard calculation. Survivors receiving a death benefit under the standard calculation from this program will receive the difference between any disability benefit paid under the PSOB Program and the death benefit available under the standard calculation if the PSOB Program disability benefit was underpaid due to a limitation in appropriations.

Death benefits under the standard calculation will be reduced by the amount of lost employment income benefits that were paid under this program either to the deceased individual during his or her lifetime, or to his or her estate after death. For example, if a smallpox vaccine recipient received $40,000 from the program during his lifetime in benefits for lost employment income and later died, his survivors would be entitled to receive a total of approximately $222,100 in this fiscal year (the approximate $262,100 death benefit, minus the $40,000 in benefits for lost employment income paid to the injured person during his lifetime).

Death Benefits Under the Alternative Calculation, Described in § 102.82(d)

Payments made under the ''alternative calculation'' of death benefits are based on the deceased person's employment income at the time he or she sustained the covered injury. Under this calculation, 75% of the deceased person's employment income (determined in the same manner as employment income for purposes of lost employment income benefits) at the time he or she sustained the covered injury resulting in death will be paid annually until the youngest of the dependents reaches the age of 18. However, the maximum annual amount that may be paid to dependents (in total) under the alternative calculation is $50,000. No lifetime caps apply to death benefits under this alternative calculation.

Death benefits under this alternative calculation are available only to surviving dependents who are younger than the age of 18. In order for such surviving dependents to receive payments under the alternative calculation as opposed to the standard calculation, the legal guardian of all the dependents younger than the age of 18 must choose to receive a proportionate share of the benefits under this calculation on their behalf, as described in § 102.82(d)(1). In the event that multiple dependents have different legal guardians, each legal guardian is responsible for choosing the calculation of death benefits on behalf of the dependents of whom he or she is the legal guardian. For this reason, the legal guardian of several individuals who qualify both as surviving dependents younger than the age of 18 and as surviving eligible children cannot select a death benefit under the standard calculation for some of those dependents and a death benefit under the alternative calculation for other dependents. For those survivors who are eligible for a death benefit under both calculations, the particular circumstances (*e.g.*, the age of the survivors, the employment income of the deceased person at the time of the covered injury) will determine which method of calculation will provide the greatest financial benefit.

If dependent survivors choose to receive death benefits under the alternative calculation, no death benefits will be paid to those dependents under the standard calculation. However, such payments would not preclude other eligible survivors of equal priority from receiving a proportionate death benefit under the standard calculation. For example, if a deceased smallpox recipient or vaccinia contact is survived by two dependents younger than the age of 18 from a prior marriage and by a spouse who is not the legal guardian of the dependents, the legal guardian of the two dependents could choose to receive a 50% share of the death benefit for the dependent children under the alternative calculation and the surviving spouse would still be able to receive his or her 50% share of the death benefit under the standard calculation. As another example, if a deceased smallpox recipient is survived by two minor, dependent children, one whose living parent is the deceased person's surviving spouse and another whose living parent is the deceased person's former spouse, the surviving spouse could receive a 50% share of the death benefit under the standard calculation and each of the dependent children would be eligible for a proportionate share (25%) of the death benefit available under the standard calculation or the alternative calculation, as determined by the children's respective legal guardians. Although the Program will generally apportion death benefits among multiple eligible survivors, it will not do so on behalf of dependents receiving death benefits under the alternative calculation if the dependents share the same legal guardian (because such payments would be made to the legal guardian on behalf of all of the dependents for whom he or she is the legal guardian). The legal guardian would be expected to apportion the award appropriately.

Death benefits paid to survivors under this alternative calculation are secondary to all payments made, or expected to be made in the future, by any third party payor for: (i) Compensation for the deceased person's loss of employment income on behalf of the dependents receiving death benefits under the alternative calculation, or their legal guardian(s); (ii) disability, retirement, or death benefits in relation to the deceased person on behalf of the dependents receiving death benefits under the alternative calculation, or their legal guardian(s); and (iii) life insurance benefits on behalf of the dependents receiving death benefits under the alternative calculation. Such secondary benefits are described in § 102.83(d)(3)(A). Reductions will not be made if such benefits were paid to other persons (for example, if a retirement benefit was paid to the surviving spouse who is not the dependents' legal guardian, no deduction would be made to the dependents' death benefit to account for the benefit the spouse received). In calculating such reductions, the Secretary will have discretion to apportion over multiple years any lump-sum third-party payments. The Secretary has a right to recover benefits paid under this program from third-party payors that have an obligation to pay for or provide such benefits.

As with other determinations made under this regulation, any determination concerning the calculation and payment of death benefits is not subject to any judicial review.

Filing a Request Package (§ 102.40–§ 102.41)

A Smallpox Vaccine Injury Compensation Request Form (hereinafter ''Request Form'') available from the program and all the eligibility and benefits documentation comprise the Smallpox Vaccine Injury Compensation Request Package (hereinafter ''Request Package''). In order for a requester to have his or her request reviewed by the program, the

requester must submit, at a minimum, a completed Request Form postmarked within the filing deadlines established by this regulation. If requesters choose to use a commercial carrier such as Federal Express, United Parcel Service, Emery, etc., or a private delivery service, in the absence of a postmark, the date that the Request Form or Request Package is marked as received by the delivery service will be considered the equivalent of a postmark. Requesters must send their Request Forms and Request Packages to the applicable address listed in § 102.41.

Representatives of Requesters (§ 102.44)

This program has been designed so that requesters do not need to retain the services of lawyers to pursue benefits under this program. However, as provided in § 102.44, requesters may have a legal or personal representative submit the Request Form and/or Request Package on their behalf. A legally competent requester must certify on the Request Form that he or she has authorized the representative to submit the Request Package on his or her behalf. Requesters who are minors or legally incompetent adults will require the assistance of a representative (who does not need to be a lawyer). Representatives of requesters who are minors or adults determined by a court to be legally incompetent are required to submit specific documentation, in addition to the documentation generally required of requesters, which is described in § 102.63. The representative of a requester is required to submit the documents that would ordinarily be required of the requester. For example, if this regulation requires a requester to submit his or her medical records, the requester's representative would be required to submit the same records on behalf of the requester.

The Secretary will direct all correspondence to, and communicate exclusively with, a requester's representative unless the Secretary is advised that the representation has stopped. As explained above, although legal representation is permitted, it is not needed for filing for program benefits. As described in § 102.44(d), the Secretary will not be responsible for the payment of any fees for the services of legal or personal representatives or for any associated costs.

Filing Deadlines (§ 102.42)

Smallpox vaccine recipients who have a covered injury have one year from the date of a smallpox vaccination administered during the effective period of the Declaration (between January 24, 2003, and January 23, 2004, unless the Secretary extends the time period) to submit a Request Form. This deadline applies even if the requester's injury was the direct result of a covered countermeasure other than the smallpox vaccine (*e.g.*, cidofovir) that was administered after the vaccine administration. Vaccinia contacts have two years to submit their Request Forms from the date of the onset of the covered injury, as documented in their medical records. Because the SEPPA, in its discussion of filing deadlines, refers to requests based on the administration of the smallpox vaccine and requests based on accidental vaccinia inoculation, the filing deadlines that apply to Request Forms filed by smallpox vaccine recipients or vaccinia contacts are the same filing deadlines that apply to Request Forms filed by the survivors or the representatives of the estates of deceased smallpox vaccine recipients and vaccinia contacts. However, as explained later in the preamble, if a smallpox vaccine recipient or vaccinia contact filed a timely Request Form and later died, his or her survivors (or the representative of his or her estate) could file an amendment to that Request Package outside of the filing deadline. Because the administration of smallpox covered countermeasures other than the smallpox vaccine (cidofovir and its derivatives or Vaccinia Immune Globulin), in the context of this program, generally relates back to complications arising from the administration of the smallpox vaccine or of accidental vaccinia inoculation, the filing deadlines set forth in § 102.42 extend to the administration of such other covered countermeasures.

In the event that the Secretary amends the Table of Injuries, requesters have an extended filing deadline, based on the effective date of the table amendment, which will be published in the **Federal Register**. However, the extended filing deadline only applies if the table amendment enables a person who could not establish a table injury before the amendment to establish such an injury.

To speed the review of eligibility, requesters should file all documentation required for eligibility determinations by the filing deadline. However, a requester will meet the filing deadline requirement by submitting only the completed and signed Request Form by that deadline, with documentation to follow. Request Forms not filed within the governing filing deadline will not be processed, and the requester will not be considered for any program benefits.

Amendments to Request Packages (§ 102.46)

The filing of amendments to previously filed Request Packages is discussed in § 102.46. As explained in that section, if a smallpox vaccine recipient or vaccinia contact filed a Request Package, but later dies, his or her survivors or the representative of his or her estate may amend the Request Package. However, a requester filing such an amended request will only be entitled to benefits under the program if the original Request Form (filed by the smallpox vaccine recipient, vaccinia contact, or representative) was filed within the applicable filing deadline. If such an amendment is filed, all of the documentation submitted with the original Request Package will be considered part of the amended Request Package and the survivor or estate representative need not resubmit such documentation. Requesters are responsible for notifying the program of any changes in circumstances that may have an impact on the Secretary's eligibility and benefits determinations.

Documentation Needed for the Secretary To Determine Eligibility (§ 102.50–§ 102.54)

Requesters or their representatives must submit appropriate documentation to allow the Secretary to determine if the requesters are eligible for program benefits. The documentation required will vary somewhat depending on whether the requester is filing as a smallpox vaccine recipient, vaccinia contact, survivor, or representative of an estate.

Medical Records Required of All Requesters To Establish a Covered Injury (§ 102.50)

Because all Request Packages filed with the program, including those filed by survivors or representatives of the estates of deceased persons, must relate back to a smallpox vaccine recipient or vaccinia contact who sustained a covered injury, all requesters must submit medical records sufficient to demonstrate to the Secretary that a covered injury was sustained by a smallpox vaccine recipient or a vaccinia contact. Section 102.50(a) describes the medical records that are generally required in order for a requester to establish that a covered injury was sustained. The Secretary will use the records submitted, as well as any other available evidence, to evaluate either whether an injury set out in the table and meeting the table's requirements was sustained or whether an injury was sustained as the direct result of

receiving a covered countermeasure (including a smallpox vaccine) or of contracting vaccinia through accidental exposure. The program will consider copies of medical records to be the same as the original records.

Although the medical records described in § 102.50(a) are those that will generally be required for all requesters, requesters may also submit additional documentation, as provided for under § 102.50(b). As described in § 102.50(d), the Secretary may determine that particular records described in § 102.50(a) are not necessary for particular requesters (for example, if certain medical records provide the exact same information as other records that are submitted) or that additional records may be required in order to make a covered injury determination (for example, in cases in which a preexisting condition may be the cause of the current injury).

If certain medical records are unavailable to a requester, the requester must submit a statement describing the reasons for the records' unavailability and the reasonable efforts the requester has made to obtain them. The Secretary may, at his discretion, accept such a statement from the requester instead of the required medical records, if the circumstances so warrant, as set forth in § 102.50(c).

If a smallpox vaccine recipient or vaccinia contact died and his or her survivors seek a death benefit under the program, the Secretary will need to review the medical records to determine whether the death was the direct result of a covered injury. As explained in § 102.53(d), the medical records reviewed for this purpose may be the same as those submitted for the covered injury determination.

In making covered injury determinations, the Secretary may consider all of the scientific evidence available (*e.g.*, published articles concerning a relationship between the smallpox vaccine and an injury) and consult with qualified medical experts.

Documentation a Smallpox Vaccine Recipient Must Submit To Be Deemed Eligible (§ 102.51)

As described above, a smallpox vaccine recipient must submit medical records that are sufficient to show that he or she sustained a covered injury, including medical records produced after the vaccination from all hospitals, clinics, or providers. In order to show eligibility, such a requester must also submit a completed and signed Request Form and the documentation described in § 102.51. As noted in § 102.51(b), a requester may submit a certification form, available from the program, completed by the entity (*e.g.*, State government, private employer) that participated in the administration of the smallpox vaccine or other covered countermeasure to the smallpox vaccine recipient as part of a smallpox emergency response plan in place of documentation otherwise required concerning the requester's participation in, and receipt of the smallpox vaccine under, an approved smallpox emergency response plan.

Documentation a Vaccinia Contact Must Submit To Be Deemed Eligible (§ 102.52)

A requester who is a vaccinia contact must submit a completed and signed Request Form and the documentation described in § 102.52. Among the required documentation is documentation identifying the individual who was the source of the accidental vaccinia inoculation. However, if such documentation is unavailable, for example, if the source of the exposure to vaccinia is unknown, the Secretary has the discretion to accept other documentation providing evidence of the source of such exposure. For example, the Secretary may accept an affidavit signed by the requester explaining the circumstances under which he or she contracted the vaccinia. If this information is supportive of the vaccinia contact contracting vaccinia from a smallpox vaccine recipient (as defined in this regulation, except that the recipient need not sustain a covered injury) or from the contact of such a person, the Secretary may accept such an affidavit in place of the required documentation.

Documentation a Survivor Must Submit To Be Deemed Eligible (§ 102.53)

A requester who is a survivor of a deceased smallpox vaccine recipient or vaccinia contact must submit a completed and signed Request Form, the documentation discussed above that the deceased person would have had to submit if he or she were alive at the time of filing, and the documentation required of survivor requesters. These requirements are described in § 102.53.

Documentation a Representative of a Deceased Person's Estate Must Submit for the Estate To Be Deemed Eligible (§ 102.54)

A requester who is the representative of the estate of a deceased smallpox vaccine recipient or vaccinia contact, seeking benefits under the program on behalf of the estate, must submit a completed and signed Request Form, the documentation discussed above that the deceased person would have had to submit if he or she were alive at the time of filing, and the documentation required of requesters who are estate representatives. These requirements are described in § 102.54.

Documentation Needed for the Secretary To Calculate Benefits (§ 102.60–§ 102.63)

In addition to the documentation requesters must submit for the Secretary to make eligibility determinations (including the determination that a covered injury was sustained), requesters must submit documentation to enable the program to calculate the type and amount of benefits available. Because the benefits available under the program are generally secondary to benefits received from third-party payors, it may be possible that certain requesters who are deemed eligible will not receive benefits from the program. Sections 102.60–102.63 describe the documentation that is required for requesters seeking particular types of benefits.

Although the program will accept such documentation at any time after a Request Form is filed, a requester need not submit any of the documentation pertaining to benefits until the Secretary has informed the requester that he or she is eligible under the program. The submission of benefits documentation is described in § 102.43(b) and is designed to ease the documentary burden on requesters who do not know whether or not they will be deemed eligible. Requesters need not submit benefits documentation until they have been notified by the Secretary that they are eligible.

In order to calculate the amount of each type of benefit available, the program requires requesters to provide documentation of every third-party payor that may have paid for or provided the benefits requested, or that may have an obligation to do so. The information required concerning such third-party payors with respect to each type of benefit available under the program is described in § 102.60–§ 102.62.

Requesters seeking medical benefits must also submit documentation concerning the amount paid or expected to be paid by such third-party payors for the medical services or items for which payment is being sought under the program. Third-party payors of medical benefits include, but are not limited to, medical insurance, Medicaid, Medicare, and any other source of medical recompense. An example of the documentation necessary to satisfy this requirement is an Explanation of

Benefits form issued by the requester's health insurance company.

Third-party payors of benefits for lost employment income include, but are not limited to, the requester's employer, disability insurance, and workers' compensation programs. In order to satisfy his or her obligations under § 102.61, a requester may need to submit documentation including his or her earnings and leave statements, information concerning the number of hours in the requester's standard work day, as well as documentation concerning any lost work benefits programs or payments.

Requesters seeking death benefits will have to submit different documentation concerning third-party payors depending on whether they are seeking death benefits under the standard calculation described in § 102.82(c) or are choosing a death benefit under the alternative calculation described in § 102.82(d). For example, survivors seeking a death benefit under the standard calculation must submit documentation concerning PSOB Program death and disability benefits. The legal guardian of survivors seeking a death benefit under the alternative calculation must submit documentation concerning a broader group of existing or potential third-party payors (described fully in the death benefits calculation section of this preamble and set forth in § 102.83(d)(3)(A)). Requesters seeking death benefits must submit other documentation described in § 102.62.

Before payments will be made, the representatives of requesters who are minors or legally incompetent adults must submit additional documentation described in § 102.63. Because some of this documentation may be time-consuming to obtain (*e.g.,* obtaining a court decree establishing a guardianship of the estate for a legally incompetent adult), the requester can wait until a benefits calculation has been made, and a written approval has been issued, before submitting such documentation.

Determinations the Secretary Will Make (§ 102.70–§ 102.74)

When the Secretary receives a completed and signed Request Form or Request Package postmarked in the appropriate time frame, he will conduct two separate reviews, as described in § 102.70. First, he will determine whether the requester is eligible. Second, the Secretary will determine the type and amount of benefits that may be paid (if any).

If the Request Package does not include sufficient documentation to determine eligibility, the Secretary will send written notice to the requester (or his or her representative) identifying the documentation that is needed, as provided for in § 102.71. The requester will be given 60 days to submit the required documentation. If, after reasonable efforts to obtain the documents, the documentation remains unavailable, the requester must submit a letter explaining the circumstances to the Secretary. The Secretary also has the discretion to accept a letter meeting the requirements set out in § 102.71 as a substitute for the unavailable documentation. Once the Secretary has sufficient documentation to make an eligibility determination, he will make that decision in a timely manner.

If the Secretary determines that a requester is not eligible for benefits under the program, he will inform the requester (or his or her representative) of the disapproval in writing. As described in § 102.72(a), the Secretary will provide information as to the options available to the requester, including the requester's right to seek reconsideration of the eligibility decision.

If the Secretary determines that a requester meets the eligibility requirements, he will notify the requester in writing of this decision, at which point the Secretary will review the Request Package in order to calculate the type and amount of the benefits. If the Request Package does not have sufficient documentation for the Secretary to calculate the amount of the benefits, the Secretary will notify the requester in writing of the documentation he requires to complete the calculation. As with the eligibility documentation, the requester will be given 60 days to submit the required documentation or provide a letter setting forth the circumstances that make the records unavailable. Again, the Secretary may accept a letter meeting the requirements set forth in § 102.71 as a substitute for the unavailable documentation. Once the Secretary has sufficient documentation to calculate a requester's benefits, the Secretary will complete this calculation in a timely manner.

As set out in § 102.73, once the Secretary has calculated the amount of the benefits and determined that payment is to be made, he will inform the requester of the approval in writing and then initiate payment. Under § 102.74, if the Secretary disapproves a request, which the Secretary may do at any time, he will so notify the requester (or his or her representative) in writing and provide information as to the options available to the requester, including the requester's right to seek reconsideration of the Secretary's decision.

Payment of All Benefits Under the Program (§ 102.83)

The Secretary's options in paying all benefits under the program are described in § 102.83. If the Secretary determines that there is a reasonable likelihood that payments of medical benefits, benefits for lost employment income, or death benefits paid under the alternative calculation (described in § 102.82(d)) will be required for a period in excess of a year from the date the Secretary determines that the requester is eligible for such benefits, the Secretary may pay such benefits through a lump-sum payment, annuity or medical insurance policy, or appropriate structured settlement agreement, as long as the payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of such benefits that the requester is eligible to receive.

As described in § 102.83(b), lump sum payments will generally be made through electronic funds transfers to requesters' accounts. If a requester is a minor, the payment will be transferred to the account of the minor's legal guardian (generally, the minor's parent). The legal guardians of minor requesters under this program will be required to use the payments for the benefit of the minor. Such legal guardians are subject to applicable State law requirements concerning payments made on behalf of minors (*e.g.*, become the guardian of the minor's estate or establish an account with State court supervision, if required by State law). In administering this program, consistent with the practice of the PSOB Program in paying death benefits on behalf of minors, the Secretary will not require proof that the legal guardian has taken such actions. Section 102.83(b) describes the requirements pertaining to lump sum payments made on behalf of adults considered legally incompetent.

As provided in § 102.83(c), the Secretary may choose to make interim payments of benefits under the program (in other words, issue a payment for a certain type or portion of program benefit prior to making the final benefits payment) in order to get certain benefits to a requester more quickly than would otherwise be possible. For example, the Secretary may pay medical benefits for past services or items to an eligible requester whose covered injury has resulted in substantial medical bills before making the final determination concerning the payment of future medical benefits. In certain cases, the

Secretary may make an interim payment of benefits even before a final eligibility or benefits determination is made. The Secretary expects such instances to be rare, and the requester in such circumstances must agree to repay the Secretary for any benefits later determined to be improper.

The Tax Consequences of Receiving Benefits From the Program

The Secretary has asked the Internal Revenue Service (IRS) to provide prompt guidance on the tax consequences of receiving benefits under SEPPA. The IRS intends to publish guidance before the end of the year that will give requesters who receive benefits under the program the information they would need to meet any Federal tax responsibilities. The IRS has committed to working with the Secretary to ensure that requesters have ready access to the tax information and assistance with any additional questions they may have.

The Secretary's Right To Recover Benefits Paid Under the Program From Third-Party Payors (§ 102.84)

As described elsewhere in this preamble, the payment of benefits under this program is generally secondary to benefits available from other third-party payors. The category of third-party payors that have primary responsibility to pay for or provide such benefits is different for each type of benefit available under this program. Such third-party payors are discussed in the sections of the preamble concerning the different types of benefits. As described in § 102.84, after the Secretary pays benefits under this program, he will be subrogated to the rights of the requester, meaning that the Secretary may assert a claim against any third-party payor with a legal or contractual obligation to pay for, or provide, such benefits. The Secretary may recover from such a third-party payor the amount of benefits the third-party payor has or had an obligation to pay for or provide. For example, if the Secretary pays a requester $10,000 in benefits for lost employment income under this program and a State workers' compensation program later determines that it is obliged to pay the requester $5,000 in workers' compensation benefits, the Secretary may pursue a claim against the State for the $5,000 (because the Secretary, as the secondary payor, would only be obligated to pay the requester $5,000 in benefits for lost employment income). Any benefits paid under this program are not subject to any lien by any primary third-party payor.

The Reconsideration Process (§ 102.90)

Every individual who has filed a Request Package and has received a determination by the Secretary either denying eligibility for benefits or denying a category or amount of benefits requested, has a right to seek reconsideration of the Secretary's determination(s). Although such initial determinations are characterized as Secretarial determinations, this decision-making authority will be delegated to the Smallpox Vaccine Injury Compensation Program Office. The requester or his or her representative must send a letter seeking reconsideration to the Associate Administrator, Special Programs Bureau, Health Resources and Services Administration, at the address provided in § 102.90(b). The letter must be received by the Department within 60 calendar days of the date of the Department's determination letter. The letter should state the reasons why the Secretary should reconsider his decision. No new documentation can be included with this letter.

The Associate Administrator, Special Programs Bureau, will convene a panel to review all cases seeking reconsideration. The panel will consist of qualified individuals who are independent of the Smallpox Vaccine Injury Compensation Program Office. The panel will review the Request Package that was before the Secretary at the time of the determination (and will not consider any new documentation submitted by the requester).

After reviewing the case, the panel will make a recommendation to the Associate Administrator, Special Programs Bureau, who will then make a final determination as to whether or not the requester is eligible for benefits or as to the type and/or amount of benefits that may be paid. The Associate Administrator will inform the requester or his or her representative in writing of the determination(s) and of the reasons. This decision will be considered the Secretary's final action on the issue for which reconsideration was sought. Requesters may not seek review of such a decision.

If the Associate Administrator's final decision is that a requester who was determined to be ineligible for benefits is, in fact, eligible, then the Secretary will make a determination as to the type and amount of benefits to be paid. The requester then has a right to seek reconsideration of the Secretary's determination on that issue.

Secretary's Review Authority and No Further Review of Determinations Made Under This Regulation (§ 102.91, § 102.92)

As described in § 102.91, the SEPPA authorizes the Secretary to review at any time, and at his own motion or on application, any determination made concerning eligibility, entitlement to benefits, and the calculation and payment of benefits under the Program and authorizes the Secretary to affirm, vacate, or modify such determination in any manner the Secretary deems appropriate.

As explained in § 102.92, once the Secretary has made a final decision as to eligibility or type or amount of benefits and the requester has exercised his or her right to reconsideration, section 262(f)(2) of the Public Health Service Act does not allow any further review of that decision by any court or administrative body (unless the President specifically directs further administrative review). Given this broad statutory prohibition against further review, no determination made under this part (including, but not limited to, eligibility determinations, benefits calculations, payment decisions, and reconsideration decisions) will be subject to any review by Federal or State courts.

Justification for Omitting Notice of Proposed Rulemaking and for Waiver of Delayed Effective Date

Through the enactment by the SEPPA of part C, Title II of the Public Health Service Act (PHS Act), the Secretary was authorized to establish and administer the Smallpox Vaccine Injury Compensation Program. Congress authorized the Secretary to issue regulations implementing the SEPPA as the Secretary deems reasonable and necessary, and provided that the initial implementing regulations could be published by interim final rule. In accordance with that statutory authority, the Secretary is herein establishing the procedures and requirements to govern the program.

In addition, the Secretary has determined, under 5 U.S.C. 553(b), that it is contrary to the public interest to follow proposed rulemaking procedures (*i.e.*, issuing a proposed rule, with an accompanying solicitation of public comments) before issuance of these regulations, because such a process might delay the continuing implementation of the President's plan to protect the population of the United States against the threat of a smallpox attack. A significant element of this plan, which is also an important priority

of the Secretary, is the increased voluntary participation of persons in smallpox emergency response plans throughout the nation, which includes voluntary immunization with the smallpox vaccine. The sooner this regulation is in effect, the sooner the program is implemented and the sooner potential requesters will be able to assess their eligibility to receive benefits from the program. Once this implementing regulation is in effect, the Secretary expects individuals who believe that they may be entitled to benefits under the program will file requests for such benefits within a short time frame. In addition, publishing this regulation promptly is necessary given that the governing filing deadlines, as applied to particular requesters, will begin to occur within a short period of time.

For the same reasons, the Secretary has determined that there is good cause to waive a delay in the rule's effective date. Nonetheless, as noted above, comments on the procedures and requirements set forth in this interim final rule will be accepted at the above listed address for a period of 60 days following the publication of the rule in the **Federal Register**. Thus, although the rule is effective immediately upon publication, the Secretary will consider the comments received and, based on them, may amend the procedures and/or requirements pertaining to this program.

Economic and Regulatory Impact

Regulatory Flexibility Act and Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act of 1980 (RFA), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are ''significant'' because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Secretary has determined that minimal resources are required to implement the provisions included in this regulation. Therefore, in accordance with the RFA, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities. Specifically, both the benefits and the burdens associated with this interim final rule will go almost entirely to individuals who are filing as requesters with the program. Any burdens on small entities associated with the implementation of this final rule (*e.g.*, completing a certification form concerning a smallpox vaccine recipient who was vaccinated under the auspices of a small entity as part of a smallpox emergency response plan, providing records to requesters seeking to comply with the regulation's documentation requirements) will be minimal in nature. Moreover, the number of small entities affected in this way will be very small in number.

The Secretary has also determined that this proposed rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. We have determined that the proposed rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801.

Nonetheless, the Secretary believes that a discussion of the factors that led to the creation of the smallpox vaccination plan and of the Smallpox Vaccine Injury Compensation Program, as well as the likely impact of both programs, is warranted. As described earlier in this preamble, prior to its eradication, smallpox (variola) was a serious illness that manifested either as outbreaks of variola major with death rates of greater than 20% or variola minor with death rates approaching 1%. Those who survived were frequently left with significant disabilities, such as blindness. Smallpox vaccine was an essential tool for the successful global eradication of smallpox, announced by the World Health Organization in 1980. Despite such eradication, concern exists that terrorists may have access to the smallpox virus.

On December 13, 2002, the President announced a plan to protect the population of the United States against the threat of a possible smallpox attack. This plan was based on heightened concerns, in the wake of the attacks of September and October 2001, that terrorists may have access to the smallpox virus and may attempt to use it against the population of the United States and government facilities abroad. Under this plan, which the Secretary is actively working to implement, State and local governments have formed volunteer smallpox emergency response teams that will be prepared to provide critical services to the population of the United States in the event of a smallpox virus attack.

In furtherance of the President's plan, and as described earlier, the Secretary issued a Declaration Regarding Administration of Smallpox Countermeasures on January 24, 2003. In this Declaration, the Secretary stated that ''a potential bioterrorist incident makes it advisable to administer, on a voluntary basis, covered countermeasures specified * * * for prevention or treatment of smallpox [(virus infection)] or control or treatment of adverse events related to smallpox vaccination, to [specified] categories of individuals * * *.'' The specific ''covered countermeasures'' described in the Declaration are smallpox vaccines, cidofovir and derivatives thereof, and Vaccinia Immune Globulin. The categories of persons to whom the Secretary recommended the administration of such covered countermeasures, on a voluntary basis, included certain health care workers, members of smallpox emergency response plans identified by State or local government entities or the Department of Health and Human Services, certain public safety personnel, and certain personnel associated with specific Federal facilities abroad. The Secretary recommended that such persons receive the smallpox vaccine to ensure that essential personnel would be able to mobilize immediately and provide critical services to the population of the United States in the event of a smallpox virus attack.

As already stated, the SEPPA was enacted on April 30, 2003. This statute authorized the Secretary to establish the Smallpox Vaccine Injury Compensation Program (the program). This program has been appropriated $42 million for the administration of the program and the payment of benefits under the program. The purpose of the program is to provide benefits to eligible members of smallpox emergency response plans who sustain a covered injury as the result of receiving the smallpox vaccine (or other smallpox covered countermeasures). In addition, certain persons who come in contact with a vaccinated member of a smallpox

emergency response plan (or the contact of such a person) and sustain a covered injury may be eligible for benefits. As noted above, death benefits are also available to survivors of individuals whose death resulted directly from a covered injury.

The availability of benefits to injured persons (and certain survivors, in the case of death) under this program was considered an important step in the implementation of the Administration's smallpox vaccination plan and in the nation's preparedness to face potential terrorist events involving the smallpox virus. Prior to the enactment of the SEPPA, and the establishment of this program, eligible smallpox vaccine recipients and vaccinia contacts were only entitled to benefits for medical care or for lost employment income related to covered injuries that were otherwise available from other third-party payors (*e.g.*, State workers' compensation programs). In addition, pursuant to the Homeland Security Act of 2002, certain smallpox vaccine recipients and vaccinia contacts could pursue legal actions relating to covered injuries under the Federal Torts Claims Act (FTCA). The latter option was limited insofar as awards under the FTCA are available only to the extent that negligence can be shown in relation to the vaccine production or administration. The SEPPA expanded the benefits available to eligible smallpox vaccine recipients and vaccinia contacts through the establishment of a no-fault administrative compensation program that supplements the benefits available from other third-party payors.

The Administration has worked to remove other disincentives to smallpox vaccination through approved smallpox emergency response plans (*e.g.*, providing appropriate guidelines for pre-vaccination screening for potential contraindications, engaging in post-vaccination surveillance and data collection).

Because it is impossible to quantify the risk of potential terrorist incidents involving the smallpox virus, it is impossible to assess the contribution that a group of first responders vaccinated with the smallpox vaccine through smallpox emergency response plans will provide to the population of the United States. In making benefits available to eligible individuals, the Administration is removing a disincentive that may be a barrier against first responders and others receiving the smallpox vaccination as participants in approved smallpox emergency response plans. In removing this disincentive, the program is likely to increase the nation's preparedness in the face of uncertainty. In addition, the establishment of the program ensures that individuals who sustain covered injuries as the direct result of such vaccinations (or of other smallpox covered countermeasures) or of accidental vaccinia inoculation will be afforded appropriate benefits, including payment for related medical services and items.

As of September 2003, approximately 38,400 vaccinations have been administered to civilians under approved smallpox emergency response plans. Of those, approximately 800 have reported medical injuries to the CDC through the Vaccine Adverse Events Reporting System (VAERS). Such reports have included three fatalities and 92 serious injuries. Some of those who have reported injuries may not be eligible for the Smallpox Vaccine Injury Compensation Program, either because the injury is not covered by the Act (*e.g.*, because the injury is excluded as a minor injury or because the injury is neither listed on the table nor is there evidence linking the smallpox vaccine to the occurrence of the injury) or because the individual is not eligible under the SEPPA (*e.g.*, the requester received the smallpox vaccine, but not as a participant in an approved smallpox emergency response plan). Nevertheless, these recorded injuries indicate a possible injury rate of about 2% of the vaccinated population.

The $42 million appropriated to the Program, in addition to covering administrative costs, was projected by Congress to cover the provision of benefits to eligible requesters. This figure was reached after consideration of the projected number of covered injuries and related deaths, projected medical costs related to the covered injuries, and the projected number of lost work days resulting from such covered injuries. The fact that program benefits are generally only available if such benefits are not available from other third-party payors (*e.g.*, medical benefits will not be paid for medical services or items if a requester's health insurance company has an obligation to pay for or provide such services or items), or are generally only available in an amount necessary to supplement benefits available from third-party payors, was also considered.

It should be noted that the smallpox vaccination program that was being considered by Congress and the Administration when the $42 million appropriation was made contemplated that up to 2–3 million individuals could be vaccinated through approved smallpox emergency response plans if individuals representing all of the occupations described in the SEPPA (including health care workers, firefighters, and public safety personnel) fully participated in the smallpox vaccination program. The number of individuals who have received the smallpox vaccine under approved smallpox emergency response plans to date is substantially smaller than the number of such vaccinees that were considered possible if the smallpox vaccination program reached full participation. As of September 2003, approximately 38,400 vaccinations were administered under approved smallpox emergency response plans. For this reason, the number of individuals eligible to receive benefits under the program may in fact be a small percentage of the numbers originally considered. Given that the number of individuals who have volunteered to receive the smallpox vaccine under approved smallpox emergency response plans is significantly smaller than the total number of potential vaccinees likely considered in devising the $42 million appropriation, the program expects the adverse events associated with the smallpox vaccination program and the amount of benefits paid by the program (which will depend, on large part, upon the amount of medical services and items, as well as lost employment income, relating to covered injuries) to be similarly smaller than what was considered in calculating the $42 million appropriation. Of course, this expectation may change over time depending upon many factors, including the number of volunteers who receive the smallpox vaccine under approved smallpox emergency response plans in the future, as well as new scientific findings concerning the existence of causal relationships between particular medical conditions and the smallpox vaccine (as well as other covered countermeasures and vaccinia contracted through accidental exposure).

In establishing the procedures described in this regulation, the Secretary has made operational decisions that will assist eligible requesters to receive benefits in a prompt and fair manner. For example, requesters are not required to obtain the services of an attorney in order to obtain benefits under the program, but are permitted to appoint a representative to assist them in filing a Request Package if this will be helpful to the requester.

In addition, the Secretary has made an effort to be flexible in circumstances in which a requester is unable to submit documentation that would otherwise be required in order to establish eligibility and entitlement to benefits. For

example, if a requester has made a good faith effort to obtain medical records, but is unable to access such records (*e.g.*, if a physician's practice is no longer in business), the Secretary may choose to accept a statement by the requester describing the reasons for the records' unavailability and the reasonable efforts the requester has made to obtain them in place of the unavailable medical records. Likewise, if a vaccinia contact is unable to identify the source of his or her exposure to vaccinia, this interim final rule enables the requester to submit an affidavit explaining the circumstances under which he or she contracted the vaccinia. If this information is consistent with the vaccinia contact contracting vaccinia from an eligible vaccinee or the contact of such a person (*e.g.*, the vaccinia contact works in a hospital and was in close contact with several individuals who received the smallpox vaccine under an approved smallpox emergency response plan and, to the best of his or her knowledge, was not in close contact with any person who received the smallpox vaccine outside such a plan), the Secretary may accept such an affidavit in place of the required documentation.

Unfunded Mandates Reform Act of 1995. The Secretary has determined that this interim final rule will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Federalism Impact Statement. The Secretary has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Impact on Family Well-Being. This interim final rule will not adversely affect the following elements of family well-being: Family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999. In fact, this interim final rule may have a positive impact on the disposable income and poverty elements of family well-being to the extent that families of injured persons (and of other persons deemed eligible to receive benefits under this part) receive, or are helped by, benefits paid under this part without imposing a corresponding burden on them.

Impact of the New Rule. In this interim final rule, the Secretary establishes the procedures and requirements applicable to requesters filing for benefits available under the program. This interim final rule is based on the SEPPA. It will have the effect of enabling certain eligible individuals who sustained covered injuries as the direct result of receiving a covered countermeasure under the Secretary's Declaration, or as a direct result of vaccinia contracted through accidental vaccinia inoculation in the case of certain vaccinia contacts, to receive benefits under the program. In the event that an otherwise eligible smallpox vaccine recipient or vaccinia contact has died, his or her estate and/or survivors may be entitled to certain benefits. This interim final rule sets out the eligibility requirements that apply to the program, and the documentation that must be submitted.

Paperwork Reduction Act of 1995. In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA) of 1995, the Department is required to solicit public comments, and receive final Office of Management and Budget (OMB) approval, on any information collection requirements set forth in rulemaking. As indicated, in order to implement the SEPPA, certain information is required as set forth in §§ 102.50–102.63 of this rule.

In accordance with the PRA, we have submitted and obtained OMB approval on this data collection and reporting of this information. An emergency review was needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, to ensure the timely availability of data as necessary to ensure the provision of benefits to eligible petitioners. Delaying the data collection would delay implementation of the statutory purpose of providing benefits to eligible individuals who sustained covered injuries, particularly because the statutory filing deadlines for certain eligible requesters may occur as early as January 2004. Implementing this regulation and providing benefits as soon as possible will ensure that the intent of SEPPA in making these benefits to eligible individuals will be implemented, to the extent possible. OMB has approved this collection, with a 180-day approval period. During this period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on the requirements set forth.

Collection of Information: The Smallpox Vaccine Injury Compensation Program.

Description of Respondents: Individuals who are members of smallpox emergency response plans who received a smallpox vaccine and sustained a covered injury from it or from other covered countermeasures. Individuals who were injured by vaccinia from contact with a vaccinated member of a smallpox emergency response plan or other vaccinia contacts also qualify. In addition, some survivors of smallpox vaccine recipients or of vaccinia contacts may be eligible for death benefits and the estates of such deceased persons may receive certain benefits.

Estimated Annual Reporting: The estimated annual reporting for this data collection is a total of six hours for reviewing and completing the Smallpox Vaccine Injury Compensation Request Form as well as the time to obtain and provide medical and financial documentation for eligibility and the computation of benefits. The estimated annual response burden is as follows:

Form	Number of respondents	Responses per respondent	Hourly response	Total burden hours	Wage rate	Total hour cost
Request Form and Supporting Documentation	1,250	1	5	6,250	$37.50	$234,375
Certification	1,250	1	1	1,250	37.50	46,875
Total	2,500			7,500		281,250

According to CDC's Vaccine Adverse Event Reporting System (VAERS), there are reports of three fatalities and 92 serious injuries (out of approximately 800 total reported injuries) based on the administration of approximately 38,400 smallpox vaccinations to volunteers within the civilian sector (as of September 2003). The program recognizes the difficulty inherent in predicting the number of individuals who will file for benefits under approved smallpox emergency response plans. Nonetheless, with the anticipation of additional individuals receiving the smallpox vaccine, plus a number of potential contact cases, the program predicts that there may be up to 1,250 requesters. It is important to note that a large number of such requesters filing Request Forms with the program may not be eligible for payments under the program for a variety of reasons (*e.g.*, they sustained minor injuries that do not qualify as covered injuries, the Secretary determines that their injuries do not qualify as table injuries and that there is insufficient evidence to establish causation, they received the smallpox vaccine outside of an approved smallpox emergency response plan, or they did not file their Request Form within the governing filing deadlines).

The annual burden estimate includes the time required to review and complete the Request Form as well as the time to obtain and provide further documentation necessary for eligibility and benefits determinations. Comments on this information collection activity should be sent to Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, NW., Washington, DC 20053; FAX: (202) 395–6974.

List of Subjects in 42 CFR Part 102

Benefits, Biologics, Compensation, Immunization, Public health, Smallpox, Vaccinia.

Dated: October 27, 2003.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

Approved: December 8, 2003.

Tommy G. Thompson,

Secretary.

■ For the reasons stated above, the Department of Health and Human Services amends part 102 of 42 CFR as follows:

■ 1. The authority section for part 102 is revised to read as follows:

Authority: 42 U.S.C. 216, 42 U.S.C. 239–239h.

■ 2. In part 102, add sections 102.1—102.20 to read as follows:

PART 102—SMALLPOX VACCINE INJURY COMPENSATION PROGRAM

Subpart A—General Provisions

Sec.
102.1 Purpose.
102.2 Summary of available benefits.
102.3 Definitions.

Subpart B—Persons Eligible to Receive Benefits

102.10 Eligible requesters.
102.11 Survivors.

Subpart C—Covered Injuries

102.20 How to establish a covered injury.
102.21 Smallpox (Vaccinia) Vaccine Injury Table.

Subpart D—Available Benefits

102.30 Benefits available to different categories of requesters under this program.
102.31 Medical benefits.
102.32 Benefits for lost employment income.
102.33 Death benefits.

Subpart E—Procedures for Filing Request Packages

102.40 How to obtain forms and instructions.
102.41 How to file a request package.
102.42 Deadlines for filing request forms.
102.43 Deadlines for submitting documentation.
102.44 Representatives of requesters.
102.45 Multiple survivors.
102.46 Amending a request package.

Subpart F—Required Documentation To Be Deemed Eligible

102.50 Medical records necessary to establish that a covered injury was sustained.
102.51 Documentation a smallpox vaccine recipient must submit to be deemed eligible by the Secretary.
102.52 Documentation a vaccinia contact must submit to be deemed eligible by the Secretary.
102.53 Documentation a survivor must submit to be deemed eligible by the Secretary.
102.54 Documentation a representative of the estate of a deceased smallpox vaccine recipient or vaccinia contact must submit to be deemed eligible by the Secretary.

Subpart G—Required Documentation for Eligible Requesters to Receive Benefits

102.60 Documentation an eligible requester seeking medical benefits must submit.
102.61 Documentation an eligible requester seeking benefits for lost employment income must submit.
102.62 Documentation an eligible requester seeking a death benefit must submit.
102.63 Documentation a representative filing on behalf of an eligible requester who is a minor or a legally incompetent adult must submit.

Subpart H—Secretarial Determinations

102.70 Determinations the Secretary must make before benefits can be paid.
102.71 Insufficient documentation for eligibility and benefits determinations.
102.72 Sufficient documentation for eligibility and benefits determinations.
102.73 Approval of benefits.
102.74 Disapproval of benefits.

Subpart I—Calculation and Payment of Benefits

102.80 Calculation of medical benefits.
102.81 Calculation of benefits for lost employment income.
102.82 Calculation of death benefits.
102.83 Payment of all benefits.
102.84 The Secretary's right to recover benefits paid under this program from third-party payors.

Subpart J—Reconsideration of the Secretary's Determinations.

102.90 Reconsideration of the Secretary's eligibility and/or benefits determinations.
102.91 Secretary's review authority.
102.92 No additional judicial or administrative review of determinations.

Subpart A—General Provisions

§ 102.1 Purpose.

This part implements Section 2 of the Smallpox Emergency Personnel Protection Act of 2003 (the Act). The Act directs the Secretary of Health and Human Services to establish procedures for providing benefits to certain individuals who sustained a covered injury as the direct result of the administration of the smallpox vaccine or other covered countermeasure, and to certain individuals who sustained a covered injury as the direct result of accidental vaccinia inoculation through contact with certain persons vaccinated with the smallpox vaccine or with individuals accidentally inoculated by them. Also, if the Secretary determines that an individual died as a result of a covered injury, the Act provides for certain survivors of that individual to receive death benefits.

§ 102.2 Summary of available benefits.

(a) The Act authorizes three forms of benefits to requesters deemed eligible by the Secretary:

(1) Payment or reimbursement for reasonable and necessary medical services and items to diagnose or treat a covered injury or its health complications, as described in § 102.31.

(2) Lost employment income incurred as a result of a covered injury, as described in § 102.32.

(3) Death payments to survivors if the Secretary determines that the death of the smallpox vaccine recipient or vaccinia contact was the direct result of

a covered injury, as described in § 102.33.

(b) The benefits paid under the Program, with the exception of death benefits paid under § 102.82(c), are secondary to any obligation of any third-party payor to pay for such benefits. Death benefits paid under § 102.82(c) are secondary to death and disability benefits under the PSOB Program. The benefits paid under the Program usually will only be paid after the requester has pursued all other available coverage from all third-party payors with an obligation to pay for or provide such benefits (*e.g.*, medical insurance for medical items, workers' compensation program(s) for lost employment income). However, as provided in § 102.84, the Secretary has the discretion to pay benefits under this Program before a potential third-party payor makes a determination on the availability of similar benefits and has the right to later pursue a claim against any third-party payor with a legal or contractual obligation to pay for, or provide, such benefits.

§ 102.3 Definitions.

This section defines certain words and phrases found throughout this part. Words and phrases that are used only in limited situations are defined in specific sections of this part.

(a) *Accidental vaccinia inoculation* means the transfer of vaccinia virus from an existing vaccination site (the skin surface where the vaccinia virus entered the body through vaccination) or inoculation site (the skin or mucous membrane surface where the vaccinia virus entered the body through means other than vaccination) on a person to a second person, resulting in a contact case.

(b) *Act* means the Smallpox Emergency Personnel Protection Act of 2003, Pub. L. 108–20, 117 Stat. 638.

(c) *Approval* means a decision by the Secretary that the requester will be paid benefits under the Program.

(d) *Benefits* means benefits and/or compensation.

(e) *Contact case* means a case in which a person developed an initial vaccinial lesion or vaccinial infection through an exposure other than being vaccinated him/herself.

(f) *Covered countermeasure* means smallpox (vaccinia) vaccines, cidofovir and its derivatives, or Vaccinia Immune Globulin, when used to prevent or treat the smallpox disease or control or treat the adverse effects of vaccinia vaccination or inoculation or of the administration of another countermeasure.

(g) *Covered injury* means an injury determined by the Secretary, in accordance with subpart C of this part, to be:

(1) An injury meeting the requirements of the Table, which is presumed to be the direct result of the administration of a smallpox vaccine or accidental vaccinia inoculation; or

(2) More likely than not, the direct result of:

(A) The administration of a covered countermeasure (including the smallpox vaccine) during the effective period of the Declaration, in the case of a smallpox vaccine recipient; or

(B) Vaccinia contracted through accidental vaccinia inoculation (and not the result of receiving a smallpox vaccine) during the effective period of the Declaration (or within 30 days after the end of such period), in the case of a vaccinia contact.

(h) *Declaration* means the Declaration Regarding Administration of Smallpox Countermeasures issued by the Secretary on January 24, 2003, and published in the **Federal Register** on January 28, 2003 (68 FR 4212).

(i) *Dependent* means a person who would be considered a dependent by the Internal Revenue Service.

(j) *Disapproval* means a decision by the Secretary that the requester will not be paid benefits under the Program.

(k) *Effective period of the Declaration* means the time span specified in the Declaration (January 24, 2003 until and including January 23, 2004), unless extended by the Secretary.

(l) *FECA Program* means the workers' compensation benefits program for civilian officers and employees of the Federal Government established under the Federal Employees' Compensation Act (5 U.S.C. 8101 *et seq.*), as amended, and implemented by the United States Department of Labor in regulations codified at 20 CFR Part 10, as amended.

(m) *Health care practitioner* means a health care provider licensed by a State and authorized to diagnose and prescribe medications and other treatments or authorized to provide primary or specialty care.

(n) *Injury* means an injury (including death), disability, illness, or condition.

(o) *Legally incompetent* means a person who is considered to lack legal capacity under applicable State law.

(p) *Program* means the Smallpox Vaccine Injury Compensation Program.

(q) *Public Safety Officers' Benefits Program (PSOB Program)* means the Program established under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 *et seq.*), as amended, and implemented by the United States Department of Justice in regulations codified at 28 CFR Part 32, as amended.

(r) *Requester* means a smallpox vaccine recipient, vaccinia contact, survivor, or representative of the estate of a deceased smallpox vaccine recipient or vaccinia contact (on behalf of the estate) who files a Request Package, or on whose behalf a Request Package is filed, under this part.

(s) *Request Form* means the form designated by the Secretary as the request form for purposes of this part.

(t) *Request Package* means the Request Form, all documentation submitted by or on behalf of the requester, and all documentation obtained by the Secretary as authorized by or on behalf of the requester for determinations of eligibility and benefits under this part.

(u) *Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(v) *Smallpox emergency response plan* means a State, local, or Department of Health and Human Services plan, approved by the Secretary, detailing actions to be taken in preparation for a possible smallpox-related emergency during the period prior to the identification of an active case of smallpox either within or outside the United States.

(w) *Smallpox (Vaccinia) Vaccine Injury Table* or *Table* or *Table of Injuries* means the table of injuries included at § 102.21, including the definitions and requirements set forth at § 102.21(b).

(x) *Smallpox vaccine recipient* means a person:

(1) Who has been a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialties who has volunteered and been selected to be a member of a smallpox emergency response plan prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified within or outside of the United States;

(2) Who is or will be functioning in a role identified in a smallpox emergency response plan;

(3) To whom a smallpox vaccine is administered pursuant to a smallpox emergency response plan during the effective period of the Declaration; and

(4) Who sustained a covered injury.

(y) *State* means any State of the United States of America, the District of Columbia, United States territories,

commonwealths, and possessions, the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

(z) *Survivor* means a survivor of a deceased smallpox vaccine recipient or vaccinia contact meeting the requirements of § 102.11.

(aa) *Third-party payor* means the United States (other than for payments of benefits under this Program) or any other third-party, including any State or local governmental entity, private insurance carrier, or employer, with a legal or contractual obligation to pay for or provide benefits.

(bb) *Vaccinia contact* means an individual who:

(1) Contracted vaccinia during the effective period of the Declaration (or within 30 days after the end of such period);

(2) Prior to contracting vaccinia, was accidentally inoculated by a person:

(A) Meeting the criteria set forth in § 102.3(x)(1)–(3) (a person meeting the definition of a smallpox vaccine recipient, except for the requirement that the person sustained a covered injury); or

(B) Who was accidentally inoculated by a person meeting the criteria set forth in § 102.3(x)(1)–(3) (a person meeting the definition of a smallpox vaccine recipient, except for the requirement that the person sustained a covered injury); and

(3) Sustained a covered injury.

Subpart B—Persons Eligible To Receive Benefits

§ 102.10 Eligible requesters.

(a) The following requesters may, as determined by the Secretary, be eligible to receive benefits from this Program:

(1) Smallpox vaccine recipients, as described in § 102.3(x);

(2) Vaccinia contacts, as described in § 102.3(bb); or

(3) Survivors, as described in § 102.3(z) and § 102.11.

(4) Representatives of the estates of deceased smallpox vaccine recipients or vaccinia contacts (*i.e.,* individuals authorized to act on behalf of the deceased person's estate under applicable state law, such as an executor).

(b) If a smallpox vaccine recipient or vaccinia contact dies, his or her survivor(s) or the representative of his or her estate may file a new Request Package (or Request Package(s)) or amend a previously filed Request Package. A new Request Package may be filed whether or not a Request Package was previously submitted by or on behalf of the deceased person, but must be filed within the filing deadlines described in § 102.42. Amendments to previously filed Request Packages and the filing deadlines for such amendments are described in § 102.46.

(c) The benefits available to different categories of requesters are described in § 102.30.

§ 102.11 Survivors.

(a) *Survivors of individuals who died as the direct result of a covered injury.* If the Secretary determines that a smallpox vaccine recipient or vaccinia contact died as the direct result of a covered injury (or injuries), his or her survivor(s) may be eligible for death benefits.

(b) *Survivors who may be eligible to receive benefits and order of priority for benefits.*

(1) The Act uses the same categories of survivors and order of priority for benefits as established and defined by the PSOB Program, except as provided in paragraphs (b)(3), (b)(4), and (b)(5) of this section.

(2) The PSOB Program's categories of survivors (known in the PSOB Program as beneficiaries) and order of priority for receipt of death benefits are detailed under subpart 1 of part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796 *et seq.*), as amended, as implemented in 28 CFR Part 32, as amended.

(3) In the PSOB Program, the person who is survived must satisfy the eligibility requirements for a deceased public safety officer, whereas the person who is survived under this Program must be a deceased smallpox vaccine recipient or vaccinia contact who would otherwise have been eligible under this part.

(4) Unlike the PSOB Program, if there are no survivors eligible to receive death benefits under the PSOB Program (as set forth in paragraph (b)(2) of this section), the legal guardian of a deceased minor who was a smallpox vaccine recipient or vaccinia contact may be eligible as a survivor under this Program. Such legal guardianship must be determined by a court of competent jurisdiction under applicable State law.

(5) A surviving dependent younger than the age of 18 whose legal guardian opts to receive a death benefit under the alternative calculation on the dependent's behalf will have the same priority as surviving eligible children under the PSOB Program (consistent with paragraph (b)(2) of this section) even if the dependent is not the surviving eligible child of the deceased person for purposes of the PSOB Program. However, such a dependent may only be eligible to receive benefits under the alternative death benefits calculation, described in § 102.82(d), and is not eligible to receive death benefits under the standard calculation described in § 102.82(c). Because death benefits paid under the alternative calculation will be paid to the dependents' legal guardian(s) on behalf of all such dependents, the Secretary will not divide or apportion such benefits among the dependents.

(6) Any change in the order of priority of survivors or of the eligible category of survivors under the PSOB Program shall apply to requesters seeking death benefits under this Program on the effective date of the change, even prior to any corresponding amendment to this part. Such changes will apply to Request Packages pending with the Program on the effective date of the change, as well as to requests filed after that date.

Subpart C—Covered Injuries

§ 102.20 How to establish a covered injury.

(a) *General.* In order to receive benefits under the Program, a requester must submit documentation showing that a covered injury, as described in § 102.3(g), was sustained. A requester can establish that a covered injury was sustained by demonstrating to the Secretary that a Table injury occurred, as described in paragraph (c) of this section. In the alternative, a requester can establish that an injury was actually caused by a covered countermeasure or accidental vaccinia inoculation, as described in paragraph (d) of this section. The Secretary will consider all relevant medical and scientific evidence, such as medical records and documentation submitted by the requester, when determining whether a covered injury was established. In addition, the Secretary may obtain the views of qualified medical experts in making determinations concerning covered injuries. As set forth in the definition of covered countermeasures, if a covered injury is related to the administration of a covered countermeasure, the countermeasure must have been administered to prevent or treat the smallpox disease or to control or treat the adverse effects of vaccinia vaccination or inoculation or of the administration of another countermeasure. The time periods described in this part for receiving a covered countermeasure (during the effective period of the Declaration) or for vaccinia contracted from accidental vaccinia inoculation (during the effective period of the Declaration or within 30 days after the end of such

period) in relation to a covered injury must also be met.

(b) *Minor injuries.* Any injuries that the Secretary deems minor will not be considered covered injuries. Minor injuries include expected and routine responses to the smallpox vaccine, other covered countermeasures, or accidental vaccinia inoculation that are not severe (*e.g.,* minor scarring or minor local reactions, for instance a mild systemic illness with a generalized maculopapular rash that resolves quickly).

(c) *Table injuries.* A requester may establish that a covered injury occurred by demonstrating that a smallpox vaccine recipient or vaccinia contact sustained an injury listed on the Smallpox (Vaccinia) Vaccine Injury Table, set forth in § 120.21, within the time interval listed on the Table and as defined by the Table's Definitions and Requirements, set forth in § 120.21(b). In such circumstances, the requester need not demonstrate the cause of the injury because the Secretary will presume, only for purposes of making determinations under this subpart, that the injury was the direct result of the administration of a smallpox vaccine or exposure to vaccinia. Even if the Table requirements are satisfied, however, an injury will not be considered a covered injury if the Secretary determines, based upon his review of the evidence, that a source other than the smallpox vaccine or exposure to vaccinia more likely than not caused the injury. In such circumstances, the Table presumption will be rebutted.

(d) *Injuries for which causation must be proven.* If an injury is not included on the Table or if a requester is unable to meet all of the Table requirements with respect to an injury included on the Table (*e.g.,* onset of the injury within the time interval included on the Table), a requester may establish a covered injury by proving causation. To establish that a covered countermeasure or accidental vaccinia inoculation caused an injury, the requester must demonstrate, by a preponderance of the evidence (more likely than not), that:

(1) In the case of a smallpox vaccine recipient, he or she sustained an injury as the direct result of the administration of a covered countermeasure (including the smallpox vaccine) during the effective period of the Declaration; or

(2) In the case of a vaccinia contact, he or she sustained an injury as the direct result of vaccinia contracted through accidental vaccinia inoculation from a person described in § 102.3(bb)(2) (a person meeting the definition of a smallpox vaccine recipient, except that the person need not sustain a covered injury, or the contact of such a person), and not as the result of receiving a smallpox vaccine. Such vaccinia must have been contracted during the effective period of the Declaration (or within 30 days after the end of such period). The Secretary will consider an injury that resulted from the administration of a covered countermeasure (other than the smallpox vaccine) to be the direct result of vaccinia contracted through accidental vaccinia inoculation if the covered countermeasure was administered as a result of such vaccinia.

§§ 102.22–102.29 [Reserved]

3. In part 102, reserve §§ 102.22–102.29.

§§ 102.30–102.91 [Added]

4. In part 102, add sections 102.30–102.91 to read as follows:

Subpart D—Available Benefits

§ 102.30 Benefits available to different categories of requesters under this Program.

(a) *Benefits available to smallpox vaccine recipients and vaccinia contacts.*

A requester who is an eligible smallpox vaccine recipient or vaccinia contact may be entitled to receive either medical benefits or benefits for lost employment income, or both.

(b) *Benefits available to survivors.* A requester who is an eligible survivor of a smallpox vaccine recipient or vaccinia contact may be entitled to receive a death benefit.

(c) *Benefits available to estates of deceased smallpox vaccine recipients or vaccinia contacts.* The estate of an otherwise eligible deceased smallpox vaccine recipient or vaccinia contact may be eligible to receive medical benefits or benefits for lost employment income, or both, if such benefits were accrued during the deceased person's lifetime as a result of a covered injury or its health complications, but were not paid while the deceased person was living. Such medical benefits and benefits for lost employment income may be available regardless of whether the death was the direct result of a covered injury or an unrelated factor. The estate of a deceased smallpox vaccine recipient or vaccinia contact may not receive a death benefit.

§ 102.31 Medical benefits.

(a) Smallpox vaccine recipients and vaccinia contacts may receive payments or reimbursements for medical services and items that the Secretary determines to be reasonable and necessary to diagnose or treat a covered injury or a health complication of a covered injury (*i.e.*, sequela). The Secretary may pay for such medical services and items in an effort to cure, counteract, or minimize the effects of any covered injury, or any health complication of a covered injury, or to give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly benefits to a requester (*e.g.*, a surgical procedure that lessens the amount of time and expense for the treatment of a covered injury). The Secretary may make such payments or reimbursements if the medical services and items have already been provided or if they are likely to be provided in the future. In making determinations about which medical services and items are reasonable and necessary, the Secretary may consider whether those medical services and items were prescribed or recommended by a health care practitioner.

(b) To receive medical benefits for the health complications of a covered injury, a requester must demonstrate that the complications are the direct result of the covered injury. Examples of health complications include, but are not limited to, complications of a covered injury that occur as part of the natural course of the underlying disease, an adverse reaction to a prescribed medication or diagnostic test used in connection with a covered injury, or a complication of a surgical procedure used to treat a covered injury.

(c) The calculation of medical benefits available under this Program is described in § 102.80. Although there are no caps on medical benefits available under this Program, the Secretary may limit payments to the amount he deems reasonable for those services and items he considers reasonable and necessary. All payment or reimbursement for medical services and items is secondary to any obligation of any third-party payor to pay for or provide such services or items to the requester. As provided in § 102.84, the Secretary retains the right to recover medical benefits paid to requesters by third-party payors.

(d) The Secretary may make payments or reimbursements of medical benefits to the estate of a deceased smallpox vaccine recipient or vaccinia contact as long as such benefits were accrued during the deceased person's lifetime as the result of a covered injury or its health complications and were not paid during the deceased person's lifetime.

§ 102.32 Benefits for lost employment income.

(a) Requesters who are smallpox vaccine recipients or vaccinia contacts

may be able to receive benefits for loss of employment income incurred as a result of a covered injury (or its health complications, as described in § 102.31(b)). These benefits are a percentage of the employment income lost due to the covered injury or its health complications.

(b) The method and amount of benefits for lost employment income are described in § 102.81. Benefits for lost employment income will be adjusted if there are fewer than 10 days of lost employment income. Benefits provided for lost employment income may also be adjusted for annual and lifetime caps. Payment of benefits for lost employment income is secondary to any obligation of any third-party payor to pay for lost employment income or to provide disability or retirement benefits to the requester. As provided in § 102.84, the Secretary retains the right to recover benefits for lost employment income paid to requesters from third-party payors.

(c) The Secretary is not requiring an individual to use paid leave (*e.g.*, sick leave or vacation leave) to be paid for lost work days. However, if an individual uses such paid leave in order to be paid for lost work days, the Secretary will not consider the days in which such leave was used to be days of lost employment income, unless the individual's employer restores the leave that was used. By restoring paid leave, an employer puts the individual in the same position as if he or she had not used paid leave on the lost work day (*i.e.*, takes back the payments made when the leave was taken and gives back the leave to the employee for future use).

(d) The Secretary may pay benefits for lost employment income to the estate of a deceased smallpox vaccine recipient or vaccinia contact as long as such benefits were accrued during the deceased person's lifetime as the result of a covered injury or its health complications and were not paid to the deceased person during his or her lifetime.

§ 102.33 Death benefits.

(a) Eligible survivors may be able to receive a death benefit under this Program if the Secretary determines that an otherwise eligible deceased smallpox vaccine recipient or vaccinia contact sustained a covered injury and died as a direct result of the injury. Annual and lifetime caps may apply to the death benefits provided. The method and amount of death benefits are described in § 102.82. As provided in § 102.84, the Secretary retains the right to recover death benefits paid to requesters from third-party payors. Death benefits may be paid under two different calculations.

(b) The standard calculation, described in § 102.82(c), is based upon the death benefit available under the PSOB Program and is available to all eligible survivors (except for surviving dependents younger than the age of 18 who are not also surviving eligible children). In the event that death benefits were paid under the PSOB Program with respect to the deceased person, no death benefits may be paid under the standard calculation. In addition, death benefits under this standard calculation are secondary to disability benefits under the PSOB Program. Any death benefit paid under the standard calculation will be reduced by the total amount of benefits for lost employment income paid to the smallpox vaccine recipient or vaccinia contact during his or her lifetime and to his or her estate after death.

(c) The alternative calculation, described in § 102.82(c), is calculated based on the person's employment income at the time of the covered injury. This calculation is only available to surviving dependents who are younger than the age of 18. The legal guardian(s) of such surviving dependents must select the death benefit as calculated under this alternative calculation before it will be paid. The payment of a death benefit as calculated under this alternative calculation is secondary to other benefits received (compensation for loss of employment income, death benefits (including PSOB Program death benefits), disability benefits, or retirement benefits on behalf of the dependent(s) or his or her legal guardian or life insurance benefits on behalf of the dependent(s)).

Subpart E—Procedures for Filing Request Packages

§ 102.40 How to obtain forms and instructions.

Interested parties may obtain copies of all necessary forms and instructions by sending a letter through the U.S. Postal Service, commercial carrier, or private courier service, by telephone, or by downloading them from the Program's website.

(a) If using the U.S. Postal Service, interested parties should send letters asking for forms and instructions to the Smallpox Vaccine Injury Compensation Program Office, Special Programs Bureau, Health Resources and Services Administration, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857.

(b) If using a commercial carrier or private courier service, interested parties should send letters asking for forms and instructions to the Smallpox Vaccine Injury Compensation Program Office, Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814.

(c) For forms and instructions, interested parties can call (888) 496–0338. This is a toll-free number.

(d) Interested parties can download forms and instructions from the Internet at *http://www.hrsa.gov/smallpoxinjury.* Click on the link to ''Forms and Instructions.''

§ 102.41 How to file a Request Package.

A Request Package comprises all the forms and documentation that are submitted to enable the Secretary to determine eligibility and calculate payments. Request Packages may be filed through the U.S. Postal Service, commercial carrier, or private courier service. The Smallpox Vaccine Injury Compensation Program Office will not accept Request Packages electronically or by hand-delivery.

(a) If using the U.S. Postal Service, requesters (or their representatives) should send all forms and documentation to the Smallpox Vaccine Injury Compensation Program Office, Special Programs Bureau, Health Resources and Services Administration, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857.

(b) If using a commercial carrier or private courier service, requesters (or their representatives) should send all forms and documentation to the Smallpox Vaccine Injury Compensation Program Office, Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814.

§ 102.42 Deadlines for Filing Request Forms.

(a) *General.* Filing deadlines vary depending on whether the injured individual is a smallpox vaccine recipient or a vaccinia contact. In all cases, the filing date is the date the Request Form is postmarked. A legibly dated receipt from a commercial carrier, a private courier service, or the U.S. Postal Service (*e.g.,* the date that a commercial carrier places on the package at the time of drop-off) will be considered equivalent to a postmark. A Request Form will not be considered filed unless it has been completed (to the fullest extent possible) and signed by the requester or his or her representative. After filing a Request

Form within the governing filing deadline, a requester can and should update the Request Form to reflect new information.

(b) *Request forms not filed within deadline.* If the Secretary determines that a Request Form was not filed within the governing filing deadline set out in this section, the Request Form will not be processed and the requester will not be entitled to any benefits under this Program.

(c) *Smallpox vaccine recipients.* All Request Forms filed by, or on behalf of, a smallpox vaccine recipient must be filed within one year of the date of the administration of a smallpox vaccine to the smallpox vaccine recipient. This deadline also applies to a deceased smallpox vaccine recipient's survivor(s) and the representative of his or her estate. This deadline applies to Request Forms concerning injuries resulting from the administration of a smallpox vaccine or other covered countermeasures.

(d) *Vaccinia contacts.* All Request Forms filed by, or on behalf of, a vaccinia contact must be filed within two years after the date of the first symptom or manifestation of onset of the covered injury in the vaccinia contact. This deadline also applies to a deceased vaccinia contact's survivor(s) and the representative of his or her estate. This deadline applies to Request Forms concerning injuries resulting from vaccinia contracted through accidental vaccinia inoculation or from the administration of covered countermeasures (other than the smallpox vaccine) as a result of such accidental vaccinia inoculation.

(e) *Request forms (or amendments to request forms) based on modifications to the table of injuries.* The Secretary may amend the Table set forth in § 102.21. The effect of such an amendment may enable a requester who previously could not establish a Table injury to establish a Table injury. In such circumstances, the requester must file a new Request Form or an amendment to a previously filed Request Form as follows:

(1) If the injured person is a smallpox vaccine recipient, within one year after the effective date of the amendment to the Table; or

(2) If the injured person is a vaccinia contact, within two years after the effective date of the amendment to the Table.

§ 102.43 Deadlines for submitting documentation.

(a) *Documentation for eligibility determinations.* All eligibility documentation required by the Program should be filed together with the Request Form. However, if this is not possible, a requester will satisfy the filing deadline as long as the signed Request Form is completed (to the fullest extent possible) and submitted within the governing filing deadline described in § 102.42. The Secretary will not generally begin his review of a requester's eligibility until the documentation necessary for the Secretary to make this determination has been submitted. All such documentation must be submitted before the Program terminates.

(b) *Documentation for benefits determinations.* Although the Secretary will accept documentation required to make benefits determinations (*i.e.,* calculate benefits available, if any) at the time the Request Form is filed or any time thereafter, requesters need not submit such documentation until they have been notified that the Secretary has determined eligibility. The Secretary will not generally begin his review of the benefits available to a requester until the documentation necessary for the Secretary to make a benefits determination has been submitted. All such documentation must be submitted before the Program terminates.

§ 102.44 Representatives of requesters.

(a) Persons other than a requester (*e.g.*, a lawyer, guardian, friend) may file a Request Package on a requester's behalf as his or her representative. A requester need not use the services of a lawyer to secure benefits under this Program. A representative (who does not need to be a lawyer) is only required, as described in this section, for requesters who are minors or legally incompetent adults. In the event that a representative files on behalf of a requester, the representative will be bound by the obligations and documentation requirements that apply to the requester (*e.g.*, if a requester is required to submit employment records, the representative must file the requester's employment records). The representative must also satisfy the requirements specific to representatives set forth in this regulation. If a requester has a representative, all communications from the Secretary will be directed exclusively to the representative.

(b) *Representatives of legally competent adults.* A requester who is a legally competent adult *may* use a representative to submit a Request Package on his or her behalf. In such circumstances, the requester must certify on the Request Form that he or she is authorizing the representative to pursue benefits under this Program on his or her behalf.

(c) *Representatives of minors and legally incompetent adults.* A requester who is a minor or a legally incompetent adult *must* use a representative to pursue benefits under this Program on his or her behalf. In such circumstances, the representative must certify, in the place provided on the Request Form, that the requester is a minor or a legally incompetent adult and that the representative is filing on behalf of the requester. In addition, before the requester will be paid by the Program, the representative must submit the documentation described in § 102.63.

(d) *No payment for attorneys' fees or costs.* Because it is not necessary to hire a lawyer to obtain benefits under this Program and because attorneys' fees or other fees and costs to representatives are not covered under the Act, the Secretary will not reimburse such fees or costs.

§ 102.45 Multiple survivors.

Multiple survivors of the same smallpox vaccine recipient or vaccinia contact may file Request Forms separately or together. Multiple survivors may also submit one set of any required documentation on behalf of all of the requesting survivors as long as such documentation is identical for each survivor.

§ 102.46 Amending a request package.

(a) *Generally.* All requesters may amend their documentation concerning eligibility until the Secretary has made an eligibility determination. Requesters also may amend their information or documentation concerning the calculation of benefits until the Secretary has made a benefits determination. The Secretary may, at his discretion, accept eligibility or benefits documents even after eligibility or benefits determinations have been made (*e.g.*, the Secretary may accept new documents concerning eligibility after determining that a requester is ineligible and may use such documents to reevaluate the earlier eligibility determination). However, such new documentation will not be used in any reconsideration regarding the initial determination. The Secretary will not consider any documentation submitted after the Program terminates.

(b) *Requesters who are survivors.* If a smallpox vaccine recipient or vaccinia contact submitted a Request Form within the filing deadline, but subsequently dies, his or her survivor(s) may amend his or her Request Package at any time before the Program terminates in order to be considered

eligible for death benefits. Such an amendment can be filed regardless of whether the Secretary made an eligibility determination or paid benefits with respect to the deceased person's Request Package. However, a survivor filing an amendment to a previously filed Request Package may only be entitled to benefits if the previously filed Request Package was filed within the governing filing deadline. All documentation that has already been submitted with respect to the deceased person will be considered part of the survivor requester's Request Package, and he or she is not required to resubmit such documentation. Survivor requesters must also file an amendment to a Request Package if there is a change in the order of priority of survivors, as described in § 102.11. Such an amendment may be filed at any time before the Program terminates.

(c) *Requests in which benefits are sought by the estate of a deceased smallpox vaccine recipient or vaccinia contact.* If a smallpox vaccine recipient or vaccinia contact submitted a Request Form within the filing deadline, but subsequently dies, a representative of his or her estate may amend his or her Request Package at any time before the Program terminates in order to be considered eligible for benefits. Such an amendment can be filed regardless of whether the Secretary made an eligibility determination or paid benefits with respect to the deceased person's Request Package. However, a representative of an estate filing an amendment to a previously filed Request Package may only be entitled to benefits if the previously filed Request Package was filed within the governing filing deadline. All required documentation that has already been submitted with respect to the deceased person will be considered part of the amended Request Package, and the representative of the estate is not required to resubmit such documentation.

Subpart F—Required Documentation To Be Deemed Eligible

§ 102.50 Medical records necessary to establish that a covered injury was sustained.

(a) In order to establish that a smallpox vaccine recipient or vaccinia contact sustained a covered injury, a requester must submit the following medical records:

(1) All physician, clinic, or hospital outpatient medical records documenting medical visits, consultations, and test results that occurred on or after the date of the smallpox vaccination or exposure to vaccinia; and

(2) All inpatient hospital medical records, including the admission history and physical examination, the discharge summary, all physician subspecialty consultation reports, all progress notes, and all test results that occurred on or after the date of the smallpox vaccination or exposure to vaccinia.

(b) A requester may submit additional medical documentation that he or she believes will support the Request Package. Although generally not required if a Table injury was sustained, a requester may need to introduce additional medical documentation or scientific evidence in order to establish that an injury was caused by a covered countermeasure (including the smallpox vaccine) or vaccinia contracted through accidental vaccinia inoculation.

(c) If certain medical records listed in paragraph (a) of this section are unavailable to the requester after he or she has made reasonable efforts to obtain the records, the requester must submit a statement describing the reasons for the records' unavailability and the efforts he or she has taken to obtain the records. The Secretary has the discretion to accept such a statement in place of the unavailable medical records. In this circumstance, the Secretary may require an authorization from the requester (or his or her representative) to try to obtain the records on his or her behalf.

(d) In certain circumstances, the Secretary may require additional medical records to make a determination that a covered injury was sustained (*e.g.*, medical records prior to the date of vaccination or accidental vaccinia exposure) or may determine that certain records described in paragraph (a) of this section are not necessary for an eligibility determination (*e.g.*, records that are duplicative of other records submitted). If the Program requests additional medical records (or information) from a requester's health care practitioner, then the requester may use a release form in order to have the medical records sent directly to the Program.

§ 102.51 Documentation a smallpox vaccine recipient must submit to be deemed eligible by the Secretary.

(a) A smallpox vaccine recipient must submit the following documentation in order to be deemed eligible by the Secretary:

(1) A completed (to the fullest extent possible) and signed Request Form.

(2) Documentation demonstrating that the requester:

(A) Is a health care worker, law enforcement officer, firefighter, security personnel, emergency medical personnel, other public safety personnel, or support personnel for such occupational specialties who has volunteered and been selected to be a member of a smallpox emergency response plan prior to the time at which the Secretary publicly announces that an active case of smallpox has been identified within or outside of the United States and that the requester is or will be functioning in a role identified in a smallpox emergency response plan; and

(B) Was administered a smallpox vaccine pursuant to an approved smallpox emergency response plan during the effective period of the Declaration.

(3) If the requester's injury relates to the administration of cidofovir or its derivatives or Vaccinia Immune Globulin, and not the smallpox vaccine, documentation demonstrating that the requester was administered such a covered countermeasure during the effective period of the Declaration.

(4) Medical records sufficient to demonstrate that the requester sustained a covered injury, as described in § 102.3(g), in accordance with the requirements set forth in § 102.50.

(b) As an alternative to the documentation described in paragraphs (a)(2)(A)–(B) of this section (documentation concerning a vaccine recipient's participation in, and receipt of the smallpox vaccine under, an approved smallpox emergency response plan), a requester may submit a certification, by a Federal, State, or local government entity or private health care entity participating in the administration of covered countermeasures through a smallpox emergency response plan, that the requester is a person described in § 102.3(x)(1)–(3) (a person meeting the definition of a smallpox vaccine recipient, except for the requirement that the person sustained a covered injury). A certification form that may be used for this purpose is available from the Program.

§ 102.52 Documentation a vaccinia contact must submit to be deemed eligible by the Secretary.

A requester who is a vaccinia contact must submit the following documentation in order to be deemed eligible by the Secretary:

(a) A completed (to the fullest extent possible) and signed Request Form;

(b) Documentation identifying the individual who was the source of the accidental vaccinia inoculation. This

documentation must demonstrate that the source of the vaccinia was an individual described in § 102.3(x)(1)–(3) (a person meeting the definition of a smallpox vaccine recipient, except for the requirement that the person sustained a covered injury) or an individual who was accidentally inoculated by an individual described in § 102.3(x)(1)–(3) (a person meeting the definition of a smallpox vaccine recipient, except for the requirement that the person sustained a covered injury). If the requester is unable to provide the identity of the person who was the source of the accidental exposure, he or she must explain in writing both why this criterion cannot be met and the circumstances of the accidental vaccinia inoculation that support an individual described above as the source of the accidental vaccinia inoculation. The Secretary has the discretion to accept the requester's statement as evidence of the requester's source of exposure; and

(c) Medical records sufficient to demonstrate that the requester contracted vaccinia during the effective period of the Declaration (or within 30 days thereafter) and sustained a covered injury, as described in § 102.3(g), in accordance with the requirements set forth in § 102.50. These records must be consistent with the requester contracting vaccinia after the accidental vaccinia inoculation described in paragraph (b) of this section.

§ 102.53 Documentation a survivor must submit to be deemed eligible by the Secretary.

A requester who is a survivor must submit the following documentation in order to be deemed eligible by the Secretary:

(a) A completed (to the fullest extent possible) and signed Request Form;

(b) All of the documentation required in:

(1) Section 102.51(a)(2)–(4) (documentation requirements for smallpox vaccine recipients), in the case of a deceased smallpox vaccine recipient. The survivor requester may submit a certification, as described in § 102.51(b) in the place of the documentation described in § 102.51(a)(2) (documentation concerning a vaccine recipient's participation in, and receipt of the smallpox vaccine under, an approved smallpox emergency response plan); or

(2) Section 102.52(b)–(d) (documentation requirements for vaccinia contacts), in the case of a deceased vaccinia contact;

(c) A death certificate for the deceased smallpox vaccine recipient or vaccinia contact. If a death certificate is unavailable, the requester must submit a letter providing the reasons for its unavailability. The Secretary has the discretion to accept other documentation as evidence that the smallpox recipient or vaccinia contact is deceased;

(d) Medical records sufficient to demonstrate that the deceased smallpox vaccine recipient or vaccinia contact died as the result of the covered injury. Such medical records may be the same as those required under § 102.50. If an autopsy was performed on the deceased smallpox vaccine recipient or vaccinia contact, the requester must submit a complete copy of the final autopsy report.

(e) Documentation showing that the requester is an eligible survivor, pursuant to § 102.11 (*e.g.*, birth certificate or marriage certificate); and

(f) A certification, on the place provided on the Request Form, either that there are no other eligible survivors (*e.g.*, for surviving eligible children, a certification that there is no surviving spouse, no other surviving eligible children, and no other surviving dependents younger than the age of 18 who may be eligible for the death benefit under the alternative calculation) or that other eligible survivors exist (along with the information known about such survivors). Section 102.11 lists eligible survivors and the priorities of survivorship.

§ 102.54 Documentation the representative of the estate of a deceased smallpox vaccine recipient or vaccine contact must submit to be deemed eligible by the Secretary.

A requester who is the representative of the estate of a deceased smallpox vaccine recipient or vaccinia contact must submit the following documentation in order for the estate to be deemed eligible by the Secretary:

(a) A completed (to the fullest extent possible) and signed Request Form;

(b) All of the documentation required in:

(1) Section 102.51(a)(2)–(4) (documentation requirements for smallpox vaccine recipients), in the case of a deceased smallpox vaccine recipient. The requester may submit a certification, as described in § 102.51(b) in the place of the documentation described in § 102.51(a)(2) (documentation concerning a vaccine recipient's participation in, and receipt of the smallpox vaccine under, an approved smallpox emergency response plan); or

(2) Section 102.52(b)–(d) (documentation requirements for vaccinia contacts), in the case of a deceased vaccinia contact;

(c) A death certificate for the deceased smallpox vaccine recipient or vaccinia contact. If a death certificate is unavailable, the requester must submit a letter providing the reasons for its unavailability. The Secretary has the discretion to accept other documentation as evidence that the smallpox recipient or vaccinia contact is deceased; and

(d) Documentation showing that the requester is the representative of the estate of the deceased smallpox vaccine recipient or vaccinia contact.

Subpart G—Required Documentation for Eligible Requesters to Receive Benefits

§ 102.60 Documentation an eligible requester seeking medical benefits must submit.

A requester deemed eligible by the Secretary who seeks payment or reimbursement for medical services or items must submit the following, in addition to the documentation submitted under subpart F:

(a) *List of third-party payors.* The requester must submit a list of all third-party payors that may have an obligation to pay for or provide any medical services or items for which payment or reimbursement is being sought under this Program. Such third-party payors may include, but are not limited to, health maintenance organizations, health insurance companies, Medicare, Medicaid, and other entities obligated to provide medical services or items or recompense individuals for medical expenses. Such a list must include the individual's account numbers and other applicable information. If the requester knows of no such third-party payor, he or she must certify to that fact. If the requester becomes aware that a third-party payor may have such an obligation, the requester must inform the Secretary within 10 business days of becoming aware of this information.

(b) *Documents for medical services or items provided in the past.* A requester seeking payment or reimbursement for medical services or items provided in the past must submit an itemized statement from each health care entity (*e.g.*, clinic, hospital, doctor, or pharmacy) and third-party payor listing the services or items provided to diagnose or treat the covered injury or its health complications and the amounts paid or expected to be paid by third parties for such services or items (*e.g.*, an Explanation of Benefits from the individual's health insurance

company). If no third-party payor has an obligation to pay for or provide such services or items, the requester must certify to that fact and submit an itemized list of the services or items provided (including the total cost of such services or items). To assist the Secretary in making a determination as to whether such services or items were reasonable and necessary to diagnose or treat a covered injury or its health complications, the requester may submit, in addition to the required medical records, documentation showing that a health care practitioner prescribed or recommended such services or items. The medical records must support the requested services and items;

(c) *Documents for medical services and items expected to be provided in the future.* A requester seeking payments for medical services or items expected to be provided in the future must submit a statement from one or more health care practitioner(s) (*e.g.*, a treating neurologist for neurologic issues and a treating cardiologist for cardiologic issues) describing those services and items that appear likely to be needed to diagnose or treat the covered injury or its health complications in the future. The medical records must support the requested services and items. A requester must submit documentation, if available, concerning the likely cost of, and the amount expected to be paid by third-party payors for, such services or items.

§ 102.61 Documentation an eligible requester seeking benefits for lost employment income must submit.

A requester deemed eligible by the Secretary who seeks benefits for lost employment income from the Program must submit, in addition to the documentation submitted under subpart F, documentation describing:

(a) The number of days (including partial days) of work missed by the smallpox vaccine recipient or vaccinia contact as a result of the covered injury or its health complications for which employment income was lost (*e.g.*, time sheet from pay period reflecting work days missed). As stated in § 102.32(c), days for which an individual used paid leave in order to be paid for lost work will be considered days of work for which employment income was received (unless the individual's employer restores the leave that was used by putting the individual in the same position as if he or she had not used paid leave);

(b) The smallpox vaccine recipient or vaccinia contact's gross employment income at the time the covered injury was sustained (*e.g.*, the individual's most recent Federal tax return or a pay stub from the time of the covered injury);

(c) Whether the smallpox vaccine recipient or vaccinia contact had one or more dependents at the time the covered injury was sustained (*e.g.*, the individual's most recent Federal tax return); and

(d) All third-party payors that have paid for or that may be required to pay the requester benefits for loss of employment income or provide disability and retirement benefits for which payment or reimbursement is being sought under this Program (*e.g.*, State workers' compensation programs, disability insurance programs, *etc.*). A requester must submit documentation, if available, concerning the amount of such payments or benefits expected to be paid by third-party payors. If the requester knows of no such third-party payor, he or she must certify to that fact. If, at any time, the requester becomes aware that a third-party payor may have such an obligation, the requester must inform the Secretary within 10 business days of becoming aware of this information.

§ 102.62 Documentation an eligible requester seeking a death benefit must submit.

(a) A requester deemed an eligible survivor by the Secretary who seeks a death benefit under § 102.82(c) must submit, in addition to the documentation submitted under subpart F, a certification informing the Secretary whether a disability or death benefit was paid under the PSOB Program with respect to the deceased smallpox vaccine recipient or vaccinia contact. If such a benefit(s) was provided, the requester must submit documentation showing the amount of the benefit(s) provided by the PSOB Program. If no such benefits were provided, the certification must explain whether any survivors are eligible for a death benefit under the PSOB Program and, if so, whether death benefits have been sought under the PSOB Program.

(b) A representative seeking a death benefit under § 102.82(d) on behalf of a dependent requester younger than the age of 18 deemed an eligible survivor by the Secretary must submit, in addition to the documentation submitted under subpart F, the following:

(1) Documentation showing that the deceased smallpox vaccine recipient or vaccinia contact is survived by one or more dependents younger than the age of 18. Such documentation must show the date of birth of all such dependents (*e.g.*, copies of birth certificates);

(2) A written selection by each legal guardian, on behalf of all of the dependents described in paragraph (b)(1) of this section for whom he or she is the legal guardian, to receive proportional death benefits under the alternative calculation as described in § 102.82(d), in place of proportional benefits available under the standard calculation as described in § 102.82(c). Written selections are described in § 102.82(d)(1).

(3) Documentation showing that the requester is the legal guardian of all of the dependents described in paragraph (b)(1) of this section, as required under § 102.63(b). If multiple dependents have different legal guardians, the legal guardian of each dependent(s) must submit such documentation;

(4) Documentation showing the deceased smallpox vaccine recipient or vaccinia contact's gross employment income at the time the covered injury was sustained (*e.g.*, the decedent's most recent Federal tax return or a pay stub from the time of the covered injury); and

(5) A description of all third-party payors that have paid for or that may be required to pay for the benefits described in § 102.82(d)(3)(A). This description must include the amount of such benefits that have been paid or that may be authorized to be paid in the future. If the representative knows of no such third-party payor, he or she must certify to that fact. If, at any time, the representative becomes aware that a third-party payor may have such an obligation, he or she must inform the Secretary within 10 business days of becoming aware of this information.

§ 102.63 Documentation a representative filing on behalf of an eligible requester who is a minor or a legally incompetent adult must submit.

Before benefits will be paid under by the Program to an eligible requester who is a minor or legally incompetent adult, his or her representative must submit, in addition to the documentation submitted under subpart F and under §§ 102.60–102.62, the following:

(a) Documentation showing that the requester is:

(1) A minor (*e.g.*, birth certificate); or

(2) A legally incompetent adult (*e.g.*, court decree of incompetency); and

(b) Documentation showing that:

(1) In the case of a minor, the requester is the legal guardian of the minor (*e.g.*, birth certificates for parents who are legal guardians or, for other legal guardians, a decree by a court of competent jurisdiction establishing the legal guardianship of a person other

than the minor's parents under applicable State law). If a minor has more than one legal guardian, this information is required only of one legal guardian; or

(2) In the case of a legally incompetent adult, a decree by a court of competent jurisdiction establishing a guardianship or conservatorship of the requester's estate under applicable State law.

Subpart H—Secretarial Determinations

§ 102.70 Determinations the Secretary must make before benefits can be paid.

(a) Before reviewing a Request Package, the Secretary will assign a Program number to the Request Package and so inform the requester (or his or her representative) in writing. All correspondence to the requester (or his or her representative) about a specific Request Package will be referenced by this Program number.

(b) Before the Secretary will pay benefits under this Program, he must determine that:

(1) The requester or his or her representative submitted a completed (to the fullest extent possible) and signed Request Form within the governing filing deadline;

(2) The requester meets the eligibility requirements set out in this part (including a determination that a covered injury was sustained); and

(3) The requester is entitled to receive benefits from the Program. In making this determination, the Secretary will decide the type(s) and amounts of benefits that will be paid to the requester.

(c) Once the Secretary has sufficient documentation to make an eligibility or benefits determination, he will make the decision in a timely manner.

§ 102.71 Insufficient documentation for eligibility and benefits determinations.

In the event that there is insufficient documentation in the Request Package for the Secretary to make the applicable determinations under this part, the Secretary will notify the requester, or his or her representative. The requester will be given 60 calendar days from the date of the Secretary's notification to submit the required documentation. If the requester is unable to provide the additional documentation, he or she may write to the Secretary and explain the reason that the requested documentation is unavailable and the efforts the requester has taken to obtain the documents. The Secretary may accept such a letter in place of the required documentation or disapprove the request due to insufficient documentation. If no documentation is submitted in response to the Secretary's letter, the Secretary may disapprove the request. The Secretary also may require an authorization from the requester (or his or her representative) to try to obtain required documentation on his or her behalf.

§ 102.72 Sufficient documentation for eligibility and benefits determinations.

(a) *Eligibility determinations.* When the Secretary determines that there is sufficient documentation in the Request Package to conduct an evaluation of a requester's eligibility, he will begin the review to determine whether the requester is eligible. If the Secretary determines that the requester is not eligible, the Secretary will inform the requester (or his or her representative) in writing of the disapproval and the options available to the requester, including reconsideration.

(b) *Benefits determinations.* If the Secretary determines that the requester is eligible for benefits, he will, after receiving documentation from the requester for a benefits determination, either calculate the amount and types of benefits, as described in subpart I of this part, or request additional documentation in order to calculate the benefits that can be paid (*e.g.*, an Explanation of Benefits from the requester's insurance company if none was provided).

(c) *Additional documentation required.* At any time after a Request Form has been filed, the Secretary may direct a requester to supplement or amend the Request Package by providing additional information or documentation.

§ 102.73 Approval of benefits.

When the Secretary has determined that benefits will be paid to a requester and has calculated the type and amount of such benefits, he will notify the requester (or his or her representative) in writing. The Secretary will make payments in accordance with § 102.83.

§ 102.74 Disapproval of benefits.

(a) If the Secretary determines that a requester is not eligible for payments under the Program, the Secretary will disapprove the request and provide the requester, or his or her representative, with a written notice of the basis for the disapproval and the options available to the requester, including reconsideration.

(b) The Secretary may disapprove a request at any time, even before the requester has submitted required documentation (*e.g.*, the Secretary may determine that a requester did not meet the filing deadline, even before required documentation is submitted or reviewed).

Subpart I—Calculation and Payment of Benefits

§ 102.80 Calculation of medical benefits.

In calculating medical benefits, the Secretary will take into consideration all reasonable costs for those medical items and services that are reasonable and necessary to diagnose or treat a smallpox vaccine recipient or vaccinia contact's covered injury or its health complications, as described in § 102.31. The Secretary will consider and may rely upon benefits documentation submitted by the requester (*e.g.*, bills, Explanation of Benefits, and cost-related documentation to support the expenses relating to the covered injury or its health complications), as required by § 102.60. The Secretary will make such payments only to the extent that such costs were not, and will not be, paid by any third-party payor and only if no third-party payor had or has an obligation to provide such services or items to the requester, except as provided in § 103.83(c) and § 103.84. There are no caps on medical benefits that may be provided under the Program.

§ 102.81 Calculation of benefits for lost employment income.

(a) Primary calculation. Benefits under this section may be paid for days of work lost as a result of a covered injury or its health complications if the smallpox vaccine recipient or vaccinia contact lost employment income for the lost work days. As described in § 102.32(c), days in which an individual used paid leave (including vacation and sick leave) for lost work days will not be considered days for which the individual lost employment income (unless the individual's employer restores the leave taken by putting the employee in the same position as if he or she had not used paid leave).

(1) The Secretary will calculate the rate of benefits to be paid for the lost work days based on the smallpox vaccine recipient or vaccinia contact's gross employment income, which includes income from self-employment, at the time he or she sustained the covered injury. The Secretary may not, except with respect to injured individuals who are minors, consider projected future earnings in this calculation.

(A) For a smallpox vaccine recipient or vaccinia contact with no dependents at the time the covered injury was sustained, the benefits are 66⅔% of the individual's gross employment income

at the time the covered injury was sustained.

(B) For a smallpox vaccine recipient or vaccinia contact with one or more dependents at the time the covered injury was sustained, the benefits are 75% of the individual's gross employment income at the time the covered injury was sustained; and

(2) In the case of a smallpox vaccine recipient or vaccinia contact who is a minor, the Secretary may consider the provisions of 5 U.S.C. 8113 (part of the statute authorizing the FECA Program), and any implementing regulations, in determining the amount of payments under this section and the circumstances under which such payments are reasonable and necessary.

(b) *Adjustment for inflation.* Benefits for lost employment income paid under the Program that represent future lost employment income will be adjusted annually to account for inflation.

(c) *Limitations on benefits paid.* The Secretary will reduce the benefits calculated under paragraphs (a) and (b) of this section, according to the limitations described in this paragraph:

(1) *Annual limitation.* The maximum amount that a requester can receive in any one year in benefits for lost employment income under this Program is $50,000;

(2) *Lifetime limitation.* The maximum amount that a requester can receive during his or her lifetime in benefits for lost employment income under this Program is the amount of the death benefit calculated under the PSOB Program in the same fiscal year as the year in which this lifetime cap is reached. This amount is the maximum death benefit payable to survivors under this Program using the standard calculation described in § 102.82(c). However, this lifetime cap does not apply if the Secretary determines that the smallpox vaccine recipient or vaccinia contact has a covered injury (or injuries) meeting the definition of ''disability'' in section 216(i) of the Social Security Act, 42 U.S.C. 416(i); and

(3) *Number of lost work days.* A requester will be compensated for ten or more days of work lost if he or she lost employment income for those days as a result of the covered injury (or its health complications). If the number of days of lost employment income due to the covered injury (or its health complications) is fewer than ten, the Secretary will reduce the number of lost work days by 5 days. If the smallpox vaccine recipient or vaccinia contact lost employment income for a period of 5 days or fewer, no benefits for lost employment income will be paid. Lost work days do not need to be consecutive. Partial days of lost employment income may be aggregated to calculate the total number of lost work days. The Secretary has the discretion to consider the reasonableness of work days (or partial work days) lost as a result of a covered injury or its health complications in this calculation.

(d) *Reductions for other coverage.* From the amount of benefits calculated under paragraphs (a), (b), and (c) of this section, the Secretary will make reductions:

(1) For all payments made, or expected to be made in the future, to the requester for compensation of lost employment income or disability or retirement benefits, by any third-party payor in relation to the covered injury or its health complications, consistent with § 102.32(b); and

(2) So that the total amount of benefits for lost employment income paid to a requester under this Program, together with the total amounts paid (or payable) by third-party payors, as described in paragraph (d)(1) of this section, does not exceed 66⅔% (or 75%, if the smallpox vaccine recipient or vaccinia contact had at least one dependent at the time the covered injury was sustained) of his or her employment income at the time of the covered injury for the lost work days. If a requester receives a lump-sum payment from any third-party payor, under any obligation described in paragraph (d)(1) of this section, the Secretary will deem such a payment to be received over a period of years, rather than in a single year. The Secretary has discretion as to how to apportion such payments over multiple years; and

(e) *Termination of payments.* The Secretary will not pay benefits for lost employment income after the requester reaches the age of 65.

§ 102.82 Calculation of death benefits.

(a) *Definitions.* For purposes of this section:

(1) *Alternative calculation* means the calculation used under paragraph (d) of this section for the death benefit available to dependents.

(2) *Deceased person* means an otherwise eligible deceased smallpox vaccine recipient or vaccinia contact; and

(3) *Dependent* means a person whom the Internal Revenue Service would have considered the deceased person's dependent at the time the covered injury was sustained, and who is younger than the age of 18 at the time of filing the Request Form.

(4) *Standard calculation* means the calculation used under paragraph (c) of this section for the death benefit available to all eligible survivors (other than dependents who do not meet another category of eligible survivors, such as surviving eligible children).

(b) *General.* (1) If the legal guardian(s) of dependents younger than 18 years of age does not file a written selection to receive death benefits under the alternative calculation, as described in paragraph (d)(1) of this section, or if the Secretary does not approve such a selection, the Secretary will pay proportionate death benefits under the standard calculation to all of the eligible survivors with priority to receive death benefits under the standard calculation, as described in § 102.11(b).

(2) If the Secretary approves a written selection to receive benefits under the alternative calculation, as described in paragraph (d)(1) of this section:

(A) If no other eligible survivors are of equal priority to receive death benefits, the Secretary will pay a death benefit in an amount calculated under the alternative calculation to the aggregate of the dependents on whose behalf the election was filed; and

(B) If other eligible survivors are of equal priority to receive death benefits as the dependents receiving death benefits under the alternative calculation, the Secretary will pay the other eligible survivors a proportionate amount of the death benefit available and calculated under the standard calculation. In such circumstances, the Secretary will pay the aggregate of the dependents receiving a death benefit under the alternative calculation a proportionate share of the benefits available under that calculation (in place of the proportionate share of the death benefit that would be available under the standard calculation). For example, if a deceased smallpox vaccine recipient is survived by a dependent 10-year old child and a spouse who is not the child's legal guardian (*e.g.*, the dependent child's parents were the deceased person and his or her former spouse), the surviving spouse would be able to receive his or her share of the death benefit under the standard calculation, and the dependent child's legal guardian, on behalf of the minor, would receive either the child's proportionate share of the death benefit under the standard calculation or the child's proportionate share of the death benefit available under the alternative calculation (if the legal guardian filed a written selection for such a death benefit).

(c) *Standard calculation of death benefits.* (1) The maximum death benefit available under the standard calculation of death benefits is the amount of the

comparable death benefit calculated under the PSOB Program in the same fiscal year as the year in which the death benefit under the standard calculation is paid under this Program (without regard to any reduction under the PSOB Program attributable to a limitation in appropriations), reduced by the total amount of benefits for lost employment income paid under this Program to the deceased person during his or her lifetime and to his or her estate after death.

(2) No death benefit will be paid under the standard calculation if a death benefit has been paid, or if survivors are eligible to receive a death benefit, under the PSOB Program with respect to the deceased person.

(3) No death benefit will be paid under the standard calculation if a disability benefit has been paid under the PSOB Program with respect to the deceased person. However, if the PSOB Program disability benefit paid was reduced because of a limitation on appropriations, a death benefit will be available under the standard calculation to the extent necessary to ensure that the total amount of disability benefits paid under the PSOB Program, together with the amount of death benefits paid under the standard calculation, equals the amount of the death benefit described in paragraph (c)(1) of this section.

(4) Death benefits will be paid under the standard calculation in a lump sum.

(d) *Alternative calculation of death benefits available to surviving dependents younger than the age of 18.* If a deceased smallpox vaccine recipient or vaccinia contact had at least one dependent who is younger than the age of 18 (and will be younger than the age of 18 at the time of the payment), the legal guardian(s) of all such dependents may request benefits under the alternative calculation described in this paragraph. To receive such a benefit, the legal guardian, on behalf of all such dependents for whom he or she is the legal guardian, must file a selection to receive benefits under the alternative calculation, as described in paragraph (d)(1) of this section. If multiple dependents have different legal guardians, each legal guardian is responsible for requesting benefits under the standard calculation or for filing a selection for a death benefit under the alternative calculation. If a single dependent has more than one legal guardian, one legal guardian may file the selection. Payments made under the alternative calculation will be made to the legal guardian(s) of all of the dependents on behalf of all of those dependents until they reach the age of 18.

(1) *Selection of benefits under alternative calculation.* Before a payment of a death benefit will be approved under the alternative calculation, the legal guardian(s) of the dependents for whom he or she is the legal guardian must file a written selection, on behalf of all such dependents, to receive a death benefit under the alternative calculation. If such a selection is approved by the Secretary, these dependents will be paid a proportionate share of the death benefit under the alternative calculation in place of the proportionate share of benefits that would otherwise be available to them under the standard calculation.

(2) *Amount of payments.* The maximum death benefit available under this paragraph is 75% of the deceased person's income (including income from self-employment) at the time he or she sustained the covered injury that resulted in death, adjusted to account for inflation (as appropriate), except as follows:

(A) The maximum payment of death benefits that may be made on behalf of the aggregate of the dependents in any one year is $50,000;

(B) All payments made under this paragraph will stop once the youngest of the dependents reaches the age of 18.

(3) *Reductions for other coverage.* The total amount of death benefits provided under the alternative calculation will be reduced so that the total amount of payments made (or expected to be made) under obligations described in paragraph (d)(3)(A) of this section, together with the death benefits paid under the alternative calculation, is not greater than the amount of payments described in paragraph (d)(2) of this section. In other words, the total amount of death benefits paid to dependents under the alternative calculation may be reduced if third-party payors have paid (or are expected to pay) for certain benefits so that such dependents will receive a total sum (combining the death benefit paid under the alternative calculation and the actual and expected benefits paid for by third-party payors) that is not greater than the death benefit that would be available under the alternative calculation if no third-party payor existed to pay such benefits.

(A) The amount of death benefits paid under the alternative calculation will be reduced for all payments made, or expected to be made in the future, by any third-party payor for:

(i) Compensation for the deceased person's loss of employment income on behalf of the dependents or their legal guardian(s);

(ii) Disability, retirement, or death benefits in relation to the deceased person (including, but not limited to, death and disability benefits under the PSOB Program) on behalf of the dependents or their legal guardian(s); and

(iii) Life insurance benefits on behalf of the dependents.

(B) In calculating such reductions, the Secretary will deem any lump-sum payment made by a third-party payor under any obligation described in paragraph (d)(3)(A) of this section, as received over a period of years, rather than in a single year. The Secretary has discretion as to how to apportion such payments over multiple years.

(4) *Timing of payments.* Payments made under this paragraph will be made on an annual basis, beginning at the time of the initial payment, to the legal guardian(s) on behalf of the aggregate of the dependents receiving the payment. In the year in which the youngest dependent reaches the age of 18, payments under this section will be paid on a pro rata basis for the period of time before that dependent reaches the age of 18. Once a dependent reaches the age of 18, the payments under this alternative calculation will no longer be made on his or her behalf. Because payments under the alternative calculation are to be made on behalf of dependents who are younger than the age of 18, if a dependent meets this requirement at the time of filing of the Request Form, but reaches the age of 18 (or is older than 18 years of age) at the time of the initial payment, no payment will be made to the dependent's legal guardian on his or her behalf under the alternative calculation.

§ 102.83 Payment of all benefits.

(a) The Secretary may pay any benefits under this Program through lump-sum payments. If the Secretary determines that there is a reasonable likelihood that the payments of medical benefits, benefits for lost employment income, or death benefits paid under the alternative calculation (described in § 102.82(d)) will be required for a period in excess of one year from the date the Secretary determines the requester is eligible for such benefits, the Secretary may make a lump-sum payment, purchase an annuity or medical insurance policy, or execute an appropriate structured settlement agreement, provided that such payment, annuity, policy, or agreement is actuarially determined to have a value equal to the present value of the projected total amount of benefits that

the requester is eligible to receive under §§ 102.80, 102.81, and 102.82(d).

(b) Lump sum payments will be made through an electronic funds transfer to an account of the requester. However, if the requester is a minor, the payment will be made to the account of his or her legal guardian on behalf of the minor. In accepting such payments, the legal guardian of a minor requester is obliged to use the funds for the benefit of the minor and to take any actions necessary to comply with state law requirements pertaining to such payments. If the requester is a legally incompetent adult, the legal guardian must establish a guardianship or conservatorship of the estate account with court oversight, in accordance with State law, and payment will be made to that account.

(c) The Secretary may, at his discretion, make interim payments of benefits under this Program, even before he makes a final determination as to the total type and total amount of benefits that will be paid. The Secretary may, for example, make an interim payment of medical benefits that have been calculated before a final determination on benefits for lost employment income is completed, or of past medical benefits that have been calculated before a final calculation of future medical benefits is completed. The Secretary may, in his discretion, make an interim payment even before a final eligibility or benefits determination is made (*e.g.*, if a piece of documentation has not been obtained because a person with a severe vaccine-related injury is hospitalized, but all other documentation is consistent with the requester meeting the eligibility requirements). If such a requester's documentation is incomplete, the requester must submit the required documentation within the time-frame determined by the requester. Such a requester must agree that he or she will be obliged to repay the Secretary such benefits in the event that such payments are later determined to be inappropriate. Any payments made on an interim basis will not entitle a requester to seek reconsideration of the Secretary's decision on these benefits until the Secretary makes a complete benefits determination.

§ 102.84 The Secretary's right to recover benefits paid under this program from third-party payors.

Upon payment of benefits under this program, the Secretary will be subrogated to the rights of the requester and may assert a claim against any third-party payor with a legal or contractual obligation to pay for (or provide) such benefits and may recover from such third-party payor(s) the amount of benefits paid up to the amount of benefits the third-party payor has or had an obligation to pay for (or provide). In other words, the Secretary may pay benefits before the requester receives a payment from a third-party payor in specific circumstances. In those circumstances, the Secretary has a right to be reimbursed by the third-party payor. The circumstances in which the Secretary may assert this right include those in which the Secretary pays benefits under this Program to a requester before a final decision is made that a third-party payor has an obligation to pay such benefits to the requester. Requesters receiving benefits under this Program (or their representatives) shall assist the Secretary in recovering such benefits. In the event that a requester receives a benefit from a third-party payor after receiving the same type of benefits from the Secretary under this Program, the Secretary has a right to recover the amount of the benefits awarded from the requester.

Subpart J—Reconsideration of the Secretary's Determinations

§ 102.90 Reconsideration of the Secretary's eligibility and benefits determinations.

(a) *Right of reconsideration.* A requester has the right to seek reconsideration of the Secretary's determination that he or she is not eligible for payment. In addition, a requester who asserts that the amount of the benefits paid by the Secretary (or the fact that certain benefits were not paid or payable) is incorrect may also seek reconsideration. Letters seeking reconsideration must be in writing, describe the reason(s) why the decision should be reconsidered, and be postmarked within 60 calendar days of the date of the Secretary's decision on the request. Because no new documentation will be considered in the reconsideration process, the letter seeking reconsideration may not include or refer to any documentation that was not before the Secretary at the time of his initial determination.

(b) *Letters seeking reconsideration.* A requester, or his or her representative, may send a letter seeking reconsideration through the U.S. Postal Service, commercial carrier, or a private courier service. The Secretary will not accept letters seeking reconsideration electronically or by hand-delivery.

(1) Letters sent through the U.S. Postal Service must be sent to the Associate Administrator, Special Programs Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 16C–17, Rockville, Maryland 20857.

(2) Letters sent through a commercial carrier or private courier service must be sent to the Associate Administrator, Special Programs Bureau, Health Resources and Services Administration, 4350 East-West Highway, 10th Floor, Bethesda, Maryland 20814.

(c) *Reconsideration process.* When the Associate Administrator of the Special Programs Bureau (the Associate Administrator), receives a letter seeking reconsideration, a qualified panel will be convened, independent of the Program, to review the Secretary's initial determination. The panel will base its recommendation on the documentation before the Secretary when the initial determination(s) was made. The panel will perform its own review and make its own findings, which will be submitted to the Associate Administrator. The Associate Administrator will then review the panel's recommendation(s) and make a final determination, which will be sent to the requester (or his or her representative). This will be the Secretary's final action on the letter seeking reconsideration and will be considered the Secretary's final determination on the request. Requesters may not seek review of a decision made on reconsideration.

§ 102.91 Secretary's review authority.

Under section 262(f)(1) of the Public Health Service Act (42 U.S.C. 239a(f)(1)), the Secretary may, at any time, review on his own motion or on application, any determination made under this part (including, but not limited to, determinations concerning eligibility, entitlement to benefits, and the calculation and payment of benefits under the Program). Upon review of such a determination, the Secretary may affirm, vacate, or modify the determination in any manner the Secretary deems appropriate.

§ 102.92 No additional judicial or administrative review of determinations made under this part.

Under section 262(f)(2) of the Public Health Service Act (42 U.S.C. 239a(f)(2)), no further judicial review of the Secretary's actions under this part (including, but not limited to, eligibility determinations, the calculation of benefits, and determinations about the method of payment of benefits) is permitted. In addition, no further administrative review of the Secretary's actions under this part is permitted

unless the President specifically directs otherwise.

[FR Doc. 03–30790 Filed 12–12–03; 8:45 am]

BILLING CODE 4165–15–P

Federal Register

Tuesday,
December 16, 2003

Part III

Environmental Protection Agency

40 CFR Part 81

Deferral of Effective Date of Nonattainment Designations for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–7599–7]

RIN 2060–AL85

Deferral of Effective Date of Nonattainment Designations for 8-Hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA is proposing to defer the effective date of air quality designations for certain areas of the country that do not meet the 8-hour ozone national ambient air quality standard (NAAQS). Early Action Compact (compact) areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. By April 15, 2004, EPA will designate all areas for the 8-hour ozone NAAQS. The EPA is proposing that, when it promulgates the designations in April 2004, EPA will issue the first of three deferrals of the effective date of the designation for any compact area that is designated nonattainment and continues to meet all compact milestones. In this proposal, EPA is proposing to defer until September 30, 2005, the effective date of the 8-hour ozone nonattainment designation for specific areas.

The EPA believes this program provides an incentive for early planning, early implementation, and early reductions of emissions leading to expeditious attainment and maintenance of the 8-hour ozone standard. In addition, these compact agreements give local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the communities control emissions from local sources earlier than the CAA would otherwise require. People living in areas that realize reductions sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur.

This proposed rule does not propose to establish attainment/nonattainment designations, nor does it address the principles that will be considered in the designation process.

DATES: Comments must be received on or before January 15, 2004. The EPA does not intend to grant a request to extend the comment period due to the need to complete the designations process by April 2004. If EPA receives comments after the close of the comment period, we will make every effort to review them.

ADDRESSES: All comments should be submitted to Docket Number OAR 2003–0090 and a copy to David Cole, EPA. Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in unit I.A of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5565 or by e-mail at: *cole.david@epa.gov* or Ms. Valerie Broadwell, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–3310 or by e-mail at: *broadwell.valerie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID Number OAR 2003–0090. 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 Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

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. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute and which, therefore, is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in unit I.A.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure

that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2003–0090. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *A-and-R-Docket@epa.gov,* Attention Docket ID No. OAR–2003–0090. In addition, please send a copy of e-mail comments to *cole.david@epa.gov.* 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. The E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in unit I.B.2 below. 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: Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR 2003–0090. In addition, please send a copy of your comments to: David Cole, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code: C539–02, Research Triangle Park, NC 27711.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20004, Attention Docket ID No. OAR 2003–0090. Such deliveries are only accepted during the Docket's normal hours of operation as identified in unit I.A.1. Please also deliver a copy of your comments to: David Cole, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709.

4. *By Facsimile.* Fax your comments to: 202–566–1741, Attention Docket ID No. OAR 2003–0090; and to: 919–541–0824, Attention: David Cole.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Outline

II. What are the health concerns addressed by the 8-hour ozone standard?
III. What is the background on implementation of the 8-hour ozone standard?
IV. What actions is EPA taking to designate areas for the 8-hour ozone standard?
A. What is EPA's schedule for designating areas for the 8-hour ozone standard?
B. What action is EPA taking to defer the effective date of the nonattainment designation for Early Action Compact areas?
V. What is an Early Action Compact, and what are compact areas required to do?
A. Why was the compact program developed?
B. What early action protocol did Texas submit to EPA?
C. What are compact areas required to do?
VI. What areas are participating in the Early Action Compact program?
A. What progress are compact areas making toward completing their milestones?
B. How will EPA address compact areas attaining the 8-hour ozone standard in April 2004?
C. What is the air quality of the compact areas?
VII. What are the impacts of this action?
A. What are the regulatory effects of this action?
B. What are the consequences of compacts for local areas?
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

II. What Are the Health Concerns Addressed by the 8-Hour Ozone Standard?

Ground-level ozone pollution is formed by the reaction of volatile organic compounds (VOC) and nitrogen oxides (NO_X) in the atmosphere in the presence of sunlight. These two pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, including on-road and off-road motor vehicles and engines, power plants and industrial facilities, and smaller ''area'' sources.

In 1979, we promulgated the 0.12 ppm (parts per million) 1-hour ozone standard, (44 FR 8202, February 8, 1979). On July 18, 1997, we promulgated a revised standard of 0.08 ppm, measured over an 8-hour period, *i.e.*, the 8-hour standard (62 FR 38856). In general, the 8-hour standard is more protective of public health and more stringent than the 1-hour standard, and there are more areas that do not meet the 8-hour standard than there are areas that do not meet the 1-hour standard.

Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are particularly susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone.

More detailed information on health effects of ozone can be found at the following web site: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html.*

III. What Is the Background on Implementation of the 8-hour Ozone Standard?

This action proposes an option that provides incentives for certain areas taking voluntary, early actions for reducing ozone for implementing the 8-hour ozone NAAQS. The option was discussed in EPA's June 2, 2003 proposed rulemaking (68 FR 32859) for implementing that standard. This section presents background information on the June 2, 2003 proposal.

On July 18, 1997, we revised the ozone NAAQS (62 FR 38856) by promulgating an ozone standard of .08 ppm as measured over an 8-hour period. At that time, we indicated that we believed that the 8-hour ozone NAAQS should be implemented under the less detailed requirements of subpart 1 of part D of title I of the CAA rather than the more detailed requirements of subpart 2. Various industry groups and States challenged EPA's final rule promulgating the 8-hour ozone NAAQS in the U.S. Court of Appeals for the District of Columbia Circuit.[1] In May 1999, the Court of Appeals remanded the ozone standard to EPA on the basis that our interpretation of our authority under the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. *American Trucking Assns., Inc.,* v. *EPA*, 175 F.3d 1027, 1034–1040 (ATA I) *aff'd*, 195 F.3d 4 (D.C. Cir., 1999)(ATA II). In addition, the Court held that the CAA clearly provided for implementation of a revised ozone standard under subpart 2, not subpart 1. *Id.* at 1048–1050.[2] We sought review of these two issues in the U.S. Supreme Court. In February 2001, the Supreme Court held that EPA's action in setting the NAAQS was not an unconstitutional delegation of authority. *Whitman* v. *American Trucking Assoc.*, 121 S.Ct. 903, 911–914 (2001) (Whitman). In addition, the Supreme Court held that the D.C. Circuit incorrectly determined that the CAA was clear in requiring implementation only under subpart 2, but determined that our implementation approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. *Id.* at 916–919. The Court also identified some elements of the CAA's classification scheme under subpart 2 that are ''ill-fitted'' to the revised standard and remanded the implementation strategy to EPA to develop a reasonable approach for implementation. *Id.* Because the D.C. Circuit had not addressed all of the issues raised in the underlying case, the court remanded the case to the D.C. Circuit for disposition of those issues. *Id.* at 919. On March 26, 2002, the D.C. Circuit rejected all remaining challenges to the ozone and fine particle ($PM_{2.5}$) standards. *American Trucking Assoc.* v. *EPA*, 283 F.3d 355 (D.C. Cir. 2002) (ATA III).

In response to the Court's remand, we proposed the 8-hour ozone implementation rule on June 2, 2003 (68 FR 32802). We plan to issue a final rule on an implementation approach in the near future.

[1] On July 18, 1997, we also promulgated a revised particulate matter (PM) standard (62 FR 38652). Litigation on the PM standard paralleled the litigation on the ozone standard and the court issued one opinion addressing both challenges. However, issues regarding implementation of the revised PM NAAQS were not litigated.

[2] The Court addressed a number of other issues, which are not relevant here.

IV. What Actions Is EPA Taking To Designate Areas for the 8-Hour Ozone Standard?

A. What Is EPA's Schedule for Designating Areas for the 8-Hour Ozone Standard?

Section 107(d) of the CAA establishes a deadline for EPA to promulgate designations of areas.[3] We have entered into a consent decree that requires us to promulgate designations on a revised schedule.[4] In a settlement with nine environmental groups, we agreed to designate areas for the 8-hour ozone standard by April 15, 2004. This deadline provided States and Tribes ample time to update their recommendations by July 15, 2003 for nonattainment area boundaries. On November 14, 2002, we issued a guidance memorandum outlining the new designations schedule, requirements for designating Tribal areas, and discussing the impact of the designation schedule on areas that are developing Early Action Compacts.[5]

B. What Action Is EPA Taking To Defer the Effective Date of Nonattainment Designation for Early Action Compact Areas?

At the time we designate areas in April 2004, we plan to take final action to defer the effective date of the nonattainment designation on a rolling basis for participating compact areas that are monitoring a violation of the 8-hour ozone standard, provided all terms of the agreement continue to be met, including timely completion of all compact milestones and reports. In today's rule, we are proposing to establish the first of three deferred effective dates. At the same time we designate all areas either attainment or nonattainment, we will take final action determining whether to defer until September 30, 2005, the effective date of the nonattainment designation for the 8-hour ozone standard for compact areas that are violating the standard, provided

[3] Section 107(d) of the CAA sets forth a schedule for designations following the promulgation of a new or revised NAAQS. The Transportation Equity Act for the Twenty-first Century (TEA–21) revised the deadline to publish nonattainment designations for the 8-hour ozone NAAQS to provide an additional year (to July 2000), but HR 3645 (EPA's appropriation bill in 2000) restricted EPA's authority to spend money to designate areas until June 2001 or the date of the Supreme Court ruling on the standard, whichever came first.

[4] *American Lung Association* v. *EPA* (D.D.C. No. 1:02CV02239).

[5] Memorandum from Jeffrey R. Holmstead, Assistant Administrator, to EPA Regional Administrators, ''Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts,'' November 14, 2002. Docket No. OAR–2003–0090–0003.

these areas continue to meet all compact milestones, which are described in section V of this proposal.

Prior to the time the first deferral expires, EPA intends to take further action to propose and, as appropriate, promulgate a second deferred effective date of the nonattainment designation for those areas that continue to fulfill all compact obligations. Finally, prior to the time the second deferral expires, EPA would propose and, as appropriate, promulgate a third deferral for those areas that continue to meet all compact milestones.

V. What Is an Early Action Compact, and What Are Compact Areas Required To Do?

A. Why Was the Compact Program Developed?

As discussed in the proposed 8-hour implementation rule, State, local and Tribal air pollution control agencies have continued to express a need for added flexibility in implementing the 8-hour ozone NAAQS, including incentives for taking action sooner than the CAA requires for reducing ground-level ozone. The compact program permits local areas to make decisions that will achieve reductions in VOC and NO_X emissions sooner than otherwise is mandated by the CAA. Early planning and early implementation of control measures that improves air quality will likely accelerate protection of public health. We issued our policy on early planning on November 14, 2002, as described in section IV of this action.

B. What Early Action Protocol Did Texas Submit to EPA?

In March 2002, the Texas Commission on Environmental Quality (TCEQ) encouraged EPA to consider incentives for early planning towards achieving the 8-hour ozone NAAQS. The TCEQ submitted to EPA the Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-hour Ozone Standard (Protocol). The Protocol was designed to achieve NO_X and VOC emissions reductions for the 8-hour ozone NAAQS sooner than would otherwise be required under the CAA. The TCEQ recommended that the Protocol be formalized by ''Early Action Compact'' agreements primarily developed by local, State and Federal (EPA) officials. The principles of the compacts, as described in the Protocol, are the following:

1. Early planning, implementation, and emissions reductions leading to expeditious attainment and maintenance of the 8-hour ozone standard;
2. Local control of the measures employed, with broad-based public input;
3. State support to ensure technical integrity of the early action plan;
4. Formal incorporation of the early action plan into the State implementation plan (SIP);
5. Designation of all areas as attainment or nonattainment in April 2004, but, for compact areas, deferral of the effective date of the nonattainment designation and/or designation requirements so long as all compact terms and milestones continue to be met; and
6. Safeguards to return areas to traditional SIP attainment requirements should compact terms be unfulfilled (*e.g.*, if the area fails to attain in 2007), with appropriate credit given for reduction measures already implemented.

In a letter dated June 19, 2002, from Gregg Cooke, Administrator, Region 6, to Robert Huston, Chairman, TCEQ, EPA endorsed the principles outlined in the Protocol. The Protocol was subsequently revised on December 11, 2002, based on comments from EPA.

The Protocol specifies certain components that compacts are addressing, including the development of local air quality plans and the following elements:

1. Completion of emissions inventories and modeling (based on most recent Agency guidance) to support selection of local control measures;
2. Adoption of control strategies that demonstrate attainment and that are submitted as a revision to the SIP;
3. Completion of a component to address emissions growth at least 5 years beyond December 31, 2007, ensuring that the area will remain in attainment of the 8-hour ozone standard during that period;
4. Public involvement in all stages of planning and implementation, including public education programs and a process that ensures stakeholder involvement and public participation in planning local strategies and reviewing air quality plans; and
5. Semiannual reports detailing progress toward completion of compact milestones.

C. What Are Compact Areas Required To Do?

The Protocol and Agency guidance (EPA memorandum dated November 14, 2002, described in section IV, and EPA memorandum dated April 4, 2003 [6] establish what compact areas are required to do. To be eligible for a compact, these areas must be attaining the 1-hour ozone standard (including maintenance areas for the 1-hour ozone standard, to the extent such areas continue to maintain that standard) and be designated attainment for that standard at the time the compact was entered into. These areas, however, may be approaching or monitoring exceedances of the 8-hour ozone standard.[7] A compact area must be attaining the 8-hour ozone standard by December 31, 2007, based on the most recent 3 years of air quality monitoring data.

The EPA's November 14, 2002, memorandum specified that compacts must be completed, submitted to EPA and signed by local, State and EPA officials by December 31, 2002. We intend to honor the commitments established in these agreements, provided these areas meet all components of the Protocol and Agency guidance and schedules. No additional areas were allowed to enter into compacts after December 31, 2002.

The Protocol describes the process by which compact areas are required to select control strategies based on SIP-quality modeling that shows attainment of the 8-hour ozone standard no later than December 31, 2007, through implementation of control strategies. The EPA specified that all compact areas must submit a local plan by March 31, 2004 that will include measures that are specific, quantified, and permanent and that, if approved into the SIP by EPA, will be federally enforceable. The March 31, 2004 submission must also include specific implementation dates for the local controls, as well as detailed documentation supporting the selection of measures. Controls must be implemented no later than December 31, 2005, which is at least 16½ months earlier than required by the CAA. Reports are required every 6 months to describe progress toward completion of milestones. In June 2006 compact areas must submit a report to EPA that describes implementation of measures that was required by the end of December 2005, as well as an assessment of reductions in emissions and air quality.

[6] Memorandum from Lydia N. Wegman, Director, Air Quality Strategies and Standards Division, ''Early Action Compacts (EACs): The June 16, 2003 Submission and Other Clarifications,'' April 4, 2003. Docket No. OAR–2003–0090–0002.

[7] One-hour ozone maintenance areas are areas that were previously designated nonattainment for the 1-hour ozone standard, but were redesignated to attainment pursuant to section 107(d)(3)(E) and subject to the requirements of section 175A of the CAA.

Table 1 describes the milestones and submissions that compact areas are required to complete in order to continue eligibility for a deferral of the effective date of nonattainment designation for the 8-hour ozone standard.

TABLE 1.—EARLY ACTION COMPACT MILESTONES

Submittal date	Compact milestone
December 31, 2002	Submit Compact for EPA signature.
June 16, 2003	Submit preliminary list and description of potential local control measures under consideration.
March 31, 2004	Submit complete local plan to State (includes specific, quantified and permanent control measures to be adopted).
December 31, 2004	State submits adopted local measures to EPA as a SIP revision that, when approved, will be federally enforceable.
2005 Ozone Season (or no later than December 31, 2005).	Implement SIP control measures.
June 30, 2006	State reports on implementation of measures and assessment of air quality improvement and reductions in NO_X and VOC emissions to date.
December 31, 2007	Area attains 8-hour ozone NAAQS.

According to the Protocol, EPA would recognize the local area's commitment to early, voluntary action by designating the compact areas violating the 8-hour NAAQS as nonattainment in April 2004 (at the time of national designations for all areas), but deferring the effective date of the nonattainment designation, so long as all terms and milestones of the Compact continue to be met. A copy of the revised Protocol is available in the docket for this proposed rulemaking.[8]

VI. What Areas Are Participating in the Early Action Compact Program?

We have entered into compacts with 33 communities. A list of these areas is presented in Table 2.

TABLE 2.—8-HOUR OZONE EARLY ACTION COMPACT AREAS

Appalachian (Greenville-Spartanburg-Anderson Area), SC.
Austin-San Marcos Area, TX.
Berkeley-Charleston-Dorchester (Charleston Area), SC.
Catawba (York-Chester-Lancaster-Union Counties), SC—part of Charlotte-Gastonia-Rock Hill Area.
Central Midlands (Columbia area), SC.
Chattanooga Area, TN–GA.
Denver Area, CO.
Fayetteville Area, NC.
Haywood County (near Memphis), TN.
Knoxville Area, TN.
Low Country (Beaufort area), SC.
Lower Savannah-Augusta (Augusta-Aiken area), GA–SC.
Memphis Area, TN–AR–MS.
Mountain Area of NC (Asheville area), NC.
Nashville Area, TN.
Northeast Texas Area (Longview-Marshall-Tyler Area), TX.
Northern Shenandoah Valley Region (Winchester/Frederick County), VA.
Oklahoma City Area, OK.
Pee Dee (Florence Area), SC.
Putnam County (Central TN, between Nashville and Knoxville), TN.
Roanoke Area, VA.
San Antonio Area, TX.
San Juan County (Farmington Area), NM.
Santee Lynches (Sumter Area), SC.
Shreveport-Bossier City Area, LA.
The Eastern Pan Handle Region (Martinsburg Area), WV.
Triad Area (Greensboro-Winston Salem-High Point), NC.
Tri-Cities Area (Johnson City-Kingsport-Bristol Area), TN.
Tulsa Area, OK.
Unifour Area (Hickory-Morganton-Lenoir Area), NC.
Upper Savannah (Abbeville-Greenwood Area), SC.
Waccamaw (Myrtle Beach Area), SC.
Washington County (West of Washington, DC), MD.

[8] The Texas Protocol was submitted to EPA in March 2002 for review and was revised in December 2002 based on the Agency's comments concerning the need for additional milestones and other clarifications. Docket No. OAR–2003–0090–0004.

A. What Progress Are Compact Areas Making Toward Completing Their Milestones?

Compact areas are continuing to make good progress toward timely completion of their milestones. All 33 communities met the June 16, 2003 milestone, which required areas to submit a list and description of local control measures each area is considering for adoption and implementation. In addition, all 33 compact areas submitted the June 30, 2003 progress report. The June 16 submissions contained many innovative measures that EPA believes have the potential to reduce air pollution, while at the same time, produce additional benefits for these communities. For example, many compact areas are considering electrified truck stops to replace the need for engine idling during truck loading or unloading. A number of other areas are considering the addition of cetane additives to fuel for increased fuel efficiency. San Antonio's list of measures includes a walking school bus program. Under this program, parents rotate the responsibility of walking groups of students to school in lieu of going by bus or by car. The Center for Disease Control reports that lack of exercise is one of the primary reasons why childhood obesity has reached epidemic proportions in the U.S. In addition to reducing vehicle miles traveled (VMT), thus decreasing mobile source emissions, a walking school bus program provides children with another opportunity to get physical exercise.

Stakeholders for the Austin, Texas compact are exploring an expedited permitting process for ''mixed use, transit-oriented, infill development.'' Mixing land uses can reduce VMT in several ways, including trip lengths, mode choice and vehicle ownership. In a recent study, EPA has concluded that by encouraging people to walk, bike, and use transit rather than drive, mixed-use development patterns reduce VMT, thereby decreasing automobile emissions and improving regional air quality.[9]

The EPA believes that these types of long-term, land use changes can reduce air pollution well into the future, as well as produce multiple benefits that go beyond cleaner air. Such additional effects include an increase in mobility for all segments of the population, an increase in physical activity and an improved quality of life. These are the kinds of measures that EPA would like to see more areas explore, but for which the CAA provides no real incentives. Based on the many innovative and creative measures contained in the June 16, 2003 submission, we believe that the Early Action Compact program can provide such an incentive.

B. How Will EPA Address Compact Areas Attaining the 8-Hour Ozone Standard in April 2004?

Compact areas that are not violating the 8-hour ozone standard using 2001–2003 ozone monitoring data will be designated attainment at the time we designate areas in April 2004. In most cases, compact areas that would not be in violation of the 8-hour standard when designations are made in April 2004 would have ozone design values near 85 parts per billion (ppb), and therefore, are at risk for violating the 8-hour ozone standard in subsequent ozone seasons (*e.g.*, 2004–2006). We encourage compact areas designated attainment for the 8-hour standard based on 2001–2003 data to continue to develop clean air plans and to remain committed to the compact program to ensure air quality remains clean. Should an area participating in the program that is designated attainment in April 2004 subsequently violate the 8-hour ozone standard during the term of the compact, EPA would not commit to redesignate the area to nonattainment for so long as the area continues to comply with the compact requirements and meet all compact milestones. The EPA would not permit any extension of the compact requirement to attain the standard by December 2007 for any compact area that violates the standard after 8-hour ozone designations in April 2004, whether the area was designated attainment or nonattainment with a deferral of the effective date of the designation.

C. What Is the Air Quality of the Compact Areas?

A total of 146 counties are covered by compacts. Sixty-four of these counties have ozone monitors and 82 counties do not. Table 3 below summarizes 2000–2002 air quality data that are available for the 146 counties participating in the program. However, in April 2004, EPA will designate areas based on 2001–2003 data; therefore, the air quality status of some compact areas may change for the purpose of designating areas for the 8-hour ozone standard.

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES

State	Compact area	County	2000–2002 Ozone design value, ppb ozone
EPA Region 3			
VA	Northern Shenandoah Valley Region. (This area is not a MSA.) Adjacent to Washington-Baltimore MSA.	Winchester City	
		Frederick County	85
VA	Roanoke Area (part of Roanoke MSA)	Roanoke County*	87
		Botetourt County*	
		Roanoke City*	
		Salem City*	
MD	Washington County (west of Washington, DC—part of Washington-Baltimore CMSA).	Washington County*	87
WV	The Eastern Pan Handle Region (Martinsburg area—part of Washington-Baltimore MSA).	Berkeley County*	
		Jefferson County*	
EPA Region 4			
NC	Mountain Area of Western NC (Asheville MSA + additional counties)	Buncombe County*	85

[9] ''Our Built and Natural Environments'' (EPA 231–R–01–002, January 2001).

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES—Continued

State	Compact area	County	2000–2002 Ozone design value, ppb ozone
		Haywood County	87
		Henderson County	
		Madison County*	
		Transylvania County	
NC	Unifour (Hickory-Morganton-Lenoir MSA)	Catawba County*	
		Alexander County*	91
		Burke County*	
		Caldwell County*	86
NC	Triad (Greensboro-Winston Salem—High Point MSA + additional counties).	Surry County	
		Yadkin County*	
		Randolph County*	
		Forsyth County*	94
		Davie County*	95
		Alamance County*	
		Caswell County	91
		Davidson County*	
		Stokes County*	
		Guilford County*	93
		Rockingham County	90
NC	Fayetteville (Fayetteville MSA)	Cumberland County*	87
SC	Appalachian—A (Greenville-Spartanburg-Anderson MSA + additional counties).	Cherokee County*	87
		Spartanburg County*	90
		Greenville County*	
		Pickens County*	85
		Anderson County*	88
		Oconee County	87**/84
SC	Catawba—B (part of Charlotte-Gastonia-Rock Hill MSA)	York County*	84
		Chester County	84
		Lancaster County	
		Union County	81
SC	Pee Dee—C (Florence MSA + additional counties)	Florence County*	
		Chesterfield County	
		Darlington County	86
		Dillon County	
		Marion County	
		Marlboro County	
SC	Waccamaw—D (Myrtle Beach MSA + additional counties)	Williamsburg County	73
		Georgetown County	
		Horry County*	
SC	Santee Lynches—E (Sumter MSA + additional counties)	Clarenton County	
		Lee County	
		Sumter County*	
		Kershaw County	
SC	Berkeley-Charleston-Dorchester—F (Charleston-North Charleston MSA)	Dorchester County*	
		Berkeley County*	81**75
		Charleston County*	77**/74
SC	Low Country—G (Beaufort area/not a MSA)	Beaufort County	
		Colleton County	80
		Hampton County	
		Jasper County	
SC/GA	Lower Savannah-Augusta (part of Augusta-Aiken MSA + additional counties).	Aiken County, SC	83
		Orangeburg County, SC	
		Barnwell County, SC	83
		Calhoun County, SC	
		Allendale County, SC	
		Bamberg County, SC	
		Richmond County, GA*	87
		Columbia County, GA*	
SC	Central Midlands—I (Columbia MSA + additional counties)	Richland County*	93
		Lexington County*	
		Newberry County	
		Fairfield County	
SC	Upper Savannah—(Abbeville-Greenwood area/not a MSA)	Abbeville County	
		Edgefield County* (in Augusta-Aiken MSA).	83
		Laurens County	

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES—Continued

State	Compact area	County	2000–2002 Ozone design value, ppb ozone
		Saluda County	
		Greenwood County	
TN/GA	Chattanooga (Chattanooga MSA + additional county)	Hamilton County, TN*	93
		Meigs County, TN*	93
		Marion County, TN*	
		Walker County, GA*.	
		Catoosa County, GA*	
TN	Knoxville (Knoxville MSA + additional counties)	Knox County*	96
		Anderson County*	92
		Union County*	
		Loudon County*	
		Blount County*	94
		Sevier County*	98
		Jefferson County	95
TN	Nashville (Nashville MSA)	Davidson County*	80
		Rutherford County*	84
		Williamson County*	87
		Wilson County*	85
		Sumner County*	88
		Robertson County*	
		Cheatham County*	
		Dickson County*	
TN/AR/MS	Memphis (Memphis MSA)	Shelby County, TN*	90
		Tipton County, TN*	
		Fayette County, TN*	
		DeSoto County, MS*	86
		Crittenden County, AR*	94
TN	Haywood County (near Memphis)—adjacent to Memphis MSA and Jackson MSA.	Haywood County	86
TN	Putnam County (central TN, between Nashville and Knoxville)—not a MSA.	Putnam County	86
TN	Johnson City-Kingsport-Bristol Area—portion of the Johnson City-Kingsport-Bristol MSA + additional county.	Sullivan County, TN*	92
		Hawkins County, TN*	
		Washington County, TN*	
		Unicoi County, TN*	
		Carter County, TN*	
		Johnson County, TN.	
EPA Region 6			
TX	Austin/San Marcos (Austin-San Marcos MSA)	Travis County*	85
		Williamson County*	
		Hays County*	
		Bastrop County*	
		Caldwell County*	
TX	Northeast Texas (Longview-Marshall & Tyler MSAs + additional county)	Gregg County* (Longview MSA)	88
		Harrison County* (Longview MSA)	
		Rusk County	
		Smith County* (Tyler MSA)	84
		Upshur County* (Longview MSA)	
TX	San Antonio (San Antonio MSA)	Bexar County*	86
		Wilson County*	
		Comal County*	
		Guadalupe County*	
OK	Oklahoma City (Oklahoma City MSA)	Canadian County*	
		Cleveland County*	77
		Logan County*	
		McClain County*	79
		Oklahoma County*	82
		Pottawatomie County*	
OK	Tulsa (part of Tulsa MSA)	Tulsa County*	87
		Creek County* (part)	
		Osage County* (part)	
		Rogers County* (part)	
		Wagoner County* (part)	
LA	Shreveport-Bossier City (Shreveport-Bossier City MSA)	Bossier Parish*	84
		Caddo Parish*	79
		Webster Parish*	

TABLE 3.—2000–2002 OZONE AIR QUALITY DATA FOR EARLY ACTION COMPACT COUNTIES—Continued

State	Compact area	County	2000–2002 Ozone design value, ppb ozone
NM	San Juan County (Farmington area—not a MSA, but a southeast segment is adjacent to Albuquerque MSA).	San Juan County	76
EPA Region 8			
CO	Denver (part of Denver-Boulder-Greeley MSA)	Denver County*	72
		Boulder County* (excluding Rocky Mtn National Park).	73
		Jefferson County*	83
		Douglas County*	80
		City/County of Broomfield* (a new county downtown).	
		Adams* and Arapahoe* Counties (the part west of Kiowa Creek) (excludes extreme eastern portions of counties).	64, 76

Note: The air quality information in this table is based on 2000–2002 data from monitors (where available) located in each county of a compact area. Ozone designations in April 2004 will be based on 2001–2003 data. The boundaries of these compact areas will not necessarily correspond to the boundaries for the 8-hour ozone nonattainment areas that will be designated in April 2004. An ozone design value of 85 ppb or greater indicates a violation of the 8-hour ozone standard. A single asterisk following a county name means that county is included in a Consolidated/Metropolitan Statistical Area (C/MSA). In a few counties, higher historical design values (indicated by double asterisks) are also listed when 2000–2002 design values are not complete at a monitoring site. A blank in the last column means either no monitor is located in the county or the monitor(s) in the county have recorded less than 3 years of data.

VII. What Are the Impacts of This Action?

This section discusses the effect of this proposed rule on compact areas, including the regulatory effects and the consequences of participation in these compacts.

A. What Are the Regulatory Effects of This Action?

Since the effective date of the nonattainment designation would be deferred for compact areas that are violating the 8-hour standard, all CAA requirements for the 8-hour standard that would apply to an area designated nonattainment for that standard, such as new source review (NSR) and transportation conformity, would not apply during the deferral period.

In April 2004, the Agency will designate areas as nonattainment based on 2001–2003 air quality monitoring data. However, based on 2000–2002 data, we do know that of those compact areas that are violating the 8-hour ozone standard, most are very close to the standard. We believe many of these areas, if their nonattainment designations were not deferred, would be classified under subpart 1 of the CAA, if EPA adopted its preferred classification scheme described in the June 2, 2003 proposed rule to implement the 8-hour ozone standard (68 FR 32866). Table 4 is a summary of the requirements that would apply if compact areas do not receive a deferred nonattainment effective date and instead become classified under subpart 1. Providing information about subpart 1 requirements in this notice does not imply that we have decided not to adopt our proposed classification option 1, which would have placed all areas under subpart 2.

TABLE 4.—SUBPART 1 NONATTAINMENT AREA REQUIREMENTS

Achieve attainment as expeditiously as practicable, but no later than 5 years after designation. EPA may grant an additional 5-year extension under certain circumstances.
Reasonable Further Progress (RFP).
Reasonably Available Control Measures requirement.
Attainment demonstration.
Major source definition of 100 tons per year or more for NSR and Reasonably Available Control Technology.
NSR offset ratio of greater than 1 to 1.
NSR permit program.
Emissions inventory.
Transportation conformity.
Contingency measures to take effect in the event of failure to show RFP or to attain.

Conversely, with a deferred effective date, a compact area would not be subject to the requirements listed above, as long as the area continues to meet all of its milestones as described in Section V, Table 1, of this notice.[10]

B. What Are the Consequences of Compacts for Local Areas?

In addition to the benefit of early reductions, there are other

[10] Note that compact areas that have maintenance plans for any other NAAQS, including the ozone 1-hour standard, are still subject to the requirements in the maintenance plan, such as contingency measures. In addition, transportation conformity would continue to apply for such areas for the 1-hour standard and any other applicable standards.

consequences associated with participating in these compacts, some of which are noted below.

1. Compacts give local areas the flexibility to develop their own approach to meeting the 8-hour ozone standard, provided the communities control emissions from local sources earlier than the CAA would otherwise require, consistent with timelines in the Protocol.

2. If all terms of the agreement are met, EPA would defer the effective date of the nonattainment designation for compact areas.

3. People living in areas that realize reductions sooner will enjoy the health benefits of cleaner air sooner than might otherwise occur.

4. Reductions in emissions from pollution control measures that are implemented as part of a compact are creditable toward air quality planning goals, to the extent credit is allowed by EPA guidance and the CAA.

5. Success of compacts depends on active and sustained participation by all stakeholders.

6. Compact areas (as well as non-compact areas) that are maintenance areas for the 1-hour ozone standard would still be subject to transportation conformity requirements for the 1-hour standard while the maintenance plan for the area is still in force under section 175A of the CAA. (Note that EPA has proposed that when it revokes the 1-hour ozone standard, transportation conformity under the 1-hour standard would no longer apply to 1-hour maintenance areas.)

7. Compact areas in the Ozone Transport Region are still subject to nonattainment NSR in accordance with section 184(b)(2) of the CAA for so long as the 1-hour ozone NAAQS continues to apply.

8. Because they are not considered nonattainment for the 8-hour ozone NAAQS until the effective date, compact areas are not eligible for Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds for purposes of the 8-hour ozone NAAQS.

9. Compact areas have an aggressive, accelerated program of milestones to meet. If an area misses a milestone, its nonattainment designation will take effect, and as such, will be subject to all of the requirements for nonattainment areas.

VIII. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas as attaining or not attaining that NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. This proposed rule provides flexibility for areas that have entered into a compact and take early action to achieve emissions reductions necessary to attain the 8-hour ozone standard. This action proposes to defer the effective date of the nonattainment designation for these areas and would allow these areas to adopt control requirements agreed to by the affected localities.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because none of the above factors applies. As such, this proposed rule was not formally submitted to OMB for review.

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, this rule would defer the effective date of the nonattainment designation for areas that implement control measures and achieve emissions reductions earlier than otherwise required by the CAA in order to attain the 8-hour ozone NAAQS. In addition, States and local areas that have entered into compacts with EPA have the flexibility to decide what to regulate in their communities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the

Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The CAA requires States to develop plans, including control measures, based on their designations and classifications. In this rule, EPA is deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us. This rule is not establishing a specific requirement for States to submit SIPs, nor does it impose any regulatory requirements. However, even if this rule did establish such a requirement, it is questionable whether a requirement to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to submit a SIP that arises out of section 110 and part D of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

In the proposal, EPA has determined that this rule contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Nonetheless, EPA carried out consultations with governmental entities affected by this rule, including States and local air pollution control agencies.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Finally, the CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This proposed rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA discussed the compact program with representatives of State and local air pollution control agencies, as well as the Clean Air Act Advisory Committee, which is also composed of State and local representatives.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

This proposed rule concerns the deferral of the effective date of nonattainment designation of the 8-hour ozone standard in compact areas that do not meet that standard, but continue to meet compact milestones. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. Early Action Compact areas that would be affected by this proposed rule would be required to develop and submit local plans for adoption and implementation of the 8-hour ozone standard earlier than the CAA requires. These plans would be submitted to EPA as SIP revisions in December 2004 rather than in April 2007. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

This proposed rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact. Furthermore, this proposed rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this proposed rule does nothing to modify that relationship. Because this proposed rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this proposed rule, EPA did outreach to Tribal representatives to inform them about the compact program, its impact on designations, and this proposed rule. The EPA supports a national ''Tribal Designations and Implementation Work Group'' which provides an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the 8-hour ozone standard. These discussions have given EPA valuable information about Tribal concerns regarding designations and implementation of the 8-hour ozone NAAQS. The EPA has encouraged Tribes to participate in the national public meetings held to take comment on early approaches to the proposed rule. Several Tribes made public comments at the April 2002 public meeting in Tempe, Arizona. The EPA specifically solicits additional comment on this proposed rule from Tribes.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this evaluation are contained in 40 CFR part 50, NAAQS for Ozone, Final Rule (62 FR 38855–38896; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. April 24, 2003.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

The EPA will encourage States that have compact areas to consider the use of such standards, where appropriate, in the development of their SIPs.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that this proposed rule should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection.

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: November 11, 2003.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–31109 Filed 12–15–03; 8:45 am]

BILLING CODE 6560–50–P

Reader Aids

Federal Register

Vol. 68, No. 241

Tuesday, December 16, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (orchange settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

67013–67356 1
67357–67584 2
67585–67786 3
67787–67936 4
67937–68232 5
68233–68486 8
68487–68716 9
68717–69000 10
69001–69294 11
69295–69582 12
69583–69940 15
69941–70120 16

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7529 (See Proc. 7741) 68483
7576 (See Proc. 7741) 68483
7740 67787
7741 68483
7742 68999
7743 69293
7744 69939

Executive Orders:
11582 (See EO 13320) 69295
13119 68233
13183 (Amended by EO 13319) 68233
13320 69295

Administrative Orders:
Memorandums:
Memorandum of March 5, 2002 (See Proc. 7741) 68483

4 CFR

27 69297
28 69297
29 69297

7 CFR

51 69941
56 68487
70 68487
91 69944
96 69944
354 67937
772 69948
905 68717
1220 69953
1412 67938
1421 67938
1901 69948
1951 .....69948, 69954
1942 69001

Proposed Rules:
900 67381
929 69343

8 CFR

264 67578

10 CFR

Proposed Rules:
35 68549
50 67811
300 68204
850 68276
851 68276

11 CFR

100 .....67013, 69583
102 67013
106 69583
114 69583
9004 69583
9034 69583

12 CFR

11 68489
16 68489
225 68493
264b 68720
905 67789

Proposed Rules:
202 68786
205 68788
213 68791
226 68793
230 68799

14 CFR

25 .....68499, 68501
39 .....67018, 67020, 67021, 67024, 67025, 67027, 67585, 67588, 67789, 67792, 67794, 67796, 67798, 69596
71 .....67357, 67358, 67359, 67360, 67361, 67590, 68449, 68503, 68504, 68505, 68506, 68507, 68508, 68973, 69305, 69597, 69598, 69599
97 .....67363, 69306
135 69307
1260 67364

Proposed Rules:
25 68563
39 .....67385, 67611, 67613, 67616, 67618, 67622, 67812, 67814, 67816, 67971, 67973, 67975, 67978, 67980, 67981, 67984, 67986, 67988, 68299, 68301, 68304, 68306, 68308, 68311, 68802, 69051, 69053, 69055, 69057, 69633
71 .....68573, 68575, 68576

15 CFR

6 69001
740 68976
742 67030
743 68976
772 68976
774 .....67030, 68976
801 69955
806 67939

17 CFR

228 69204
229 69204
240 69204
249 69204
270 69204
274 69204

Proposed Rules:
143 69634

200 68186
201 68186
240 68186
403 69059

18 CFR

4 69957
5 69978
11 67592
35 69599
37 69134
161 69134
250 69134
284 69134
358 69134

19 CFR

4 68140
10 67338
103 68140
113 68140
122 68140
123 68140
163 67338
178 68140
192 68140

20 CFR

404 69003
416 69003
718 69930
725 69930
Proposed Rules:
422 69978

21 CFR

1 69957
314 69009
347 68509
520 68723
522 68723
601 69009
872 67365
Proposed Rules:
17 67094
872 67097

22 CFR

89 69600
126 67032
303 68695

24 CFR

570 69580
891 67316

25 CFR

170 67941

26 CFR

1 ....67595, 68511, 69020, 69024
301 67595
602 67595
Proposed Rules:
1 ....69061, 69062

27 CFR

9 67367
Proposed Rules:
7 67388
25 67388

28 CFR

Proposed Rules:
901 67991

29 CFR

4011 67032
4022 ....67033, 69606
4044 ....67035, 69606
Proposed Rules:
1917 68804
1918 68804
2510 68710

30 CFR

250 69308
934 67801
948 ....67035, 68724
Proposed Rules:
732 67776

31 CFR

1 67943
323 67943
Proposed Rules:
50 67100

32 CFR

706 ....68511, 68513, 68514, 68515, 68516
806b 68517
Proposed Rules:
312 68577
806b 68578

33 CFR

1 69958
66 68235
100 ....67944, 68239
117 69607
165 ....67371, 67946, 68518, 69609, 69958

34 CFR

200 68698
668 69312
674 69312
682 69312
685 69312

36 CFR

7 69268
242 67595
Proposed Rules:
7 69358

37 CFR

1 67805
253 67045
Proposed Rules:
1 ....67818, 69442
2 69442
10 69442
11 69442

38 CFR

Proposed Rules:
19 69062
20 69062

39 CFR

Proposed Rules:
111 69066

40 CFR

52 ....67045, 67598, 67805, 67807, 67948, 68521, 68523, 69025, 69318, 69320, 69611
60 ....69029, 69036
61 ....67932, 69029, 69036
62 68738
63 ....67953, 69029, 69036, 69164
81 69611
180 69322
271 68526
Proposed Rules:
51 68805
52 ....67821, 67993, 68579, 68580, 68581, 69069, 69366, 69637, 69640
61 69069
62 68805
63 69069
81 ....69640, 70108
180 68806
247 68813
271 68585
302 67916
355 67916

41 CFR

105–55 68740
105–56 68750
105–57 68760
301–10 69618

42 CFR

52a 69619
102 70080
403 69840
408 69840
412 67955
413 67955
414 67960
476 67955
484 67955
Proposed Rules:
1001 69366

43 CFR

4 68765
Proposed Rules:
4100 68452

44 CFR

64 67051
65 ....67052, 69323, 69959
67 ....67056, 69961
Proposed Rules:
67 ....67106, 67107

45 CFR

1604 67372
Proposed Rules:
2400 69980

46 CFR

401 69564
404 69564
Proposed Rules:
501 67510
535 67510

47 CFR

2 ....68241, 68531
15 68531
18 68531
54 69622
73 ....67378, 67599, 67964, 68254, 68547, 69327, 69328, 69627
74 ....68241, 69328
76 67599
78 68241
90 68531
95 68531
101 68241
Proposed Rules:
2 68823
15 68823
52 68831
53 68585
54 69641
64 68312
73 ....67389, 67390, 67624, 68833, 69648
76 67624

48 CFR

Ch. 1 ....69226, 69259
Ch. 30 67868
1 ....69227, 69258
2 ....67354, 69246
4 69248
6 69258
8 69249
9 ....67354, 69250
13 69258
22 67354
25 69258
28 67354
31 ....69246, 69251
36 69227
44 67354
52 ....67354, 69251, 69257, 69258
53 ....69227, 69248
232 ....69628, 69631
252 ....69628, 69631
904 68771
923 68771
952 68771
970 68771
Proposed Rules:
8 69262
31 69264
1809 67995
1837 67995
1852 67995

49 CFR

171 67746
192 69778
199 69046
571 ....67068, 69046
586 67068
1152 67809
Proposed Rules:
171 67821
173 67821
174 67821
176 67821
177 67821
192 ....67128, 67129, 69368
195 ....67129, 69368
571 68319

50 CFR

100 67595
223 69962
229 69967
300 67607
402 68254
600 69331
622 68784
635 69969
648 ....67609, 69970
679 ....67086, 67379, 67964, 68265, 69047, 69048, 69049,

69974

Proposed Rules:

216.....67629

223.....68834

224.....68834

600.....67636, 69070

622.....68854

648.....69373

660 .....67132, 67638, 67640, 67998, 68834

679 .....67390, 67642, 68002

697.....67636

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 16, 2003

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Servicing and collections—

Prompt disaster set-aside consideration and primary loan servicing facilitation; published 12-16-03

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Servicing and collections—

Prompt disaster set-aside consideration and primary loan servicing facilitation; published 12-16-03

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Servicing and collections—

Prompt disaster set-aside consideration and primary loan servicing facilitation; published 12-16-03

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Servicing and collections—

Prompt disaster set-aside consideration and primary loan servicing facilitation; published 12-16-03

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; published 10-17-03

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Resources and Services Administration

Smallpox Compensation Program:

Implementation; published 12-16-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 12-1-03

McDonnell Douglas; published 12-1-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Livestock mandatory reporting:

Lamb reporting; definitions; comments due by 12-26-03; published 10-27-03 [FR 03-27015]

Onions grown in—

Texas; comments due by 12-22-03; published 11-21-03 [FR 03-29060]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic coastal fisheries cooperative management—

Atlantic striped bass; comments due by 12-22-03; published 10-20-03 [FR 03-26400]

CONSUMER PRODUCT SAFETY COMMISSION

Flammable Fabrics Act:

Upholstered furniture; flammability standards; comments due by 12-22-03; published 10-23-03 [FR 03-26809]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Commercial Items and commercial components; subcontracts; comments due by 12-26-03; published 10-27-03 [FR 03-26953]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; comments due by 12-24-03; published 11-24-03 [FR 03-29175]

Ambient air quality standards, national—

Transportation conformity; 8-hour ozone and fine particulate matter standards; criteria and procedures; comments due by 12-22-03; published 11-5-03 [FR 03-27372]

Air quality implementation plans; approval and promulgation; various States:

Delaware; comments due by 12-26-03; published 11-26-03 [FR 03-29427]

Missouri; comments due by 12-26-03; published 11-26-03 [FR 03-29425]

New Jersey; comments due by 12-22-03; published 11-21-03 [FR 03-29181]

Pennsylvania; comments due by 12-24-03; published 11-24-03 [FR 03-29174]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Tebufenozide; comments due by 12-23-03; published 10-24-03 [FR 03-26756]

FARM CREDIT ADMINISTRATION

Farm credit system:

Loan policies and operations, etc.—

Other financial institutions and investments in Farmers' notes; comments due by 12-22-03; published 10-23-03 [FR 03-26729]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Commercial Items and commercial components; subcontracts; comments due by 12-26-03; published 10-27-03 [FR 03-26953]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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

Food facilities registration; comments due by 12-24-03; published 10-10-03 [FR 03-25849]

Public Health Security and Bioterrorism Preparedness and Response Act of 2002; implementation:

Food importation notice to FDA; comments due by 12-24-03; published 10-10-03 [FR 03-25877]

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Pollution:

Ballast water discharge standard; preventing introductions and spread of nonindigenous species; environmental protection requirement; comments due by 12-26-03; published 9-26-03 [FR 03-24138]

Ports and waterways safety:

Tongass Narrows and Ketchikan, AK; anchorage ground speed limit; safety zone; comments due by 12-22-03; published 10-21-03 [FR 03-26554]

HOMELAND SECURITY DEPARTMENT

Nonimmigrant classes:

Student and Exchange Visitor Information System; F, J, and M nonimmigrants; application fees; comments due by 12-26-03; published 10-27-03 [FR 03-26970]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Migratory bird hunting:

Hevi-steel; nontoxic shot material for waterfowl hunting; application; comments due by 12-23-03; published 10-24-03 [FR 03-26934]

Silvex metal; nontoxic shot material for waterfowl

hunting; application; comments due by 12-23-03; published 10-24-03 [FR 03-26935]

INTERIOR DEPARTMENT
National Park Service

Special regulations:
Armistad National Recreation Area, TX; personal watercraft use; comments due by 12-22-03; published 10-22-03 [FR 03-26577]
Boating and water use activities; comments due by 12-24-03; published 8-26-03 [FR 03-21333]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Kentucky; comments due by 12-22-03; published 11-20-03 [FR 03-28997]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Commercial Items and commercial components; subcontracts; comments due by 12-26-03; published 10-27-03 [FR 03-26953]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

National Historical Publications and Records Commission; Nondiscrimination in Federally Assisted Programs:
Section 504 of the Rehabilitation Act of 1973; implementation; comments due by 12-22-03; published 10-22-03 [FR 03-26614]

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:
Nuclear power plants; decommissioning trust fund provisions; comments due by 12-22-03; published 11-20-03 [FR 03-29021]

POSTAL SERVICE

Postage meters:
Manufacture and distribution; authorization; comments due by 12-22-03; published 11-20-03 [FR 03-28958]

Postal programs:
Semipostal Stamp Program; comments due by 12-22-03; published 11-20-03 [FR 03-28957]

SECURITIES AND EXCHANGE COMMISSION

Securities and investment companies:
Security holder director nominations; comments due by 12-22-03; published 10-23-03 [FR 03-26351]

SOCIAL SECURITY ADMINISTRATION

Social Security benefits:
Federal old-age, survivors, and disability insurance and aged, blind, and disabled—
Disability benefits terminated due to work activity; reinstatement of entitlement; comments due by 12-26-03; published 10-27-03 [FR 03-26951]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Airworthiness directives:
Aerostar Aircraft Corp.; comments due by 12-23-03; published 10-28-03 [FR 03-26833]
Augusta S.p.A.; comments due by 12-22-03; published 10-22-03 [FR 03-26624]
Rolls-Royce plc; comments due by 12-22-03; published 10-23-03 [FR 03-26720]

Class E airspace; comments due by 12-22-03; published 11-6-03 [FR 03-27909]

Exemption petitions; summary and disposition; comments due by 12-26-03; published 10-27-03 [FR 03-27055]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Burma; special measures imposition due to designation as primary money laundering concern; comments due by 12-26-03; published 11-25-03 [FR 03-29289]
Myanar Mayflower Bank and Asia Wealth Bank; special measures imposition due to designation as institutions of primary money laundering concern; comments due by 12-26-03; published 11-25-03 [FR 03-29288]

TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau

Alcoholic beverages:
Flavored malt beverages
Comments received; Internet posting; comments due by 12-23-03; published 12-2-03 [FR 03-29905]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1828/P.L. 108–175

Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Dec. 12, 2003; 117 Stat. 2482)

H.R. 2115/P.L. 108–176

Vision 100-Century of Aviation Reauthorization Act (Dec. 12, 2003; 117 Stat. 2490)

Last List December 11, 2003

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.