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Presidential Documents

Title 3—

The President

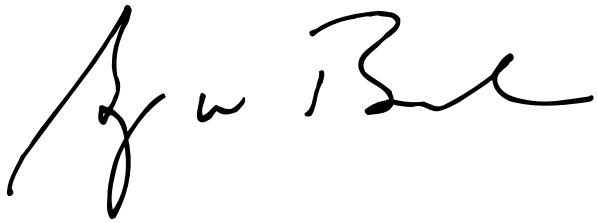
Presidential Determination No. 2004–21 of January 15, 2004

Designation of the State of Kuwait as a Major Non-NATO Ally

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 517 of the Foreign Assistance Act of 1961, as amended (the ''Act''), I hereby designate the State of Kuwait as a Major Non-NATO Ally of the United States for the purposes of the Act and the Arms Export Control Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 15, 2004.

[FR Doc. 04–2151
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Billing code 4710–10–P

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 300, 301, and 319

[Docket No. 02–071–2]

Cold Treatment of Fruits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, by revising the cold treatment schedules under which fruits are treated for the Mediterranean fruit fly (Medfly) and other specified pests. Based on a review of those treatment schedules, we determined that it was necessary to extend the duration of cold treatment for Medfly. We also amended the regulations for importing fruits and vegetables to provide that inspectors at the port of first arrival will sample and cut fruit from each shipment cold treated for Medfly to monitor the effectiveness of the cold treatment. The interim rule was necessary to protect against the introduction and dissemination of Medflies into and within the contiguous United States.

EFFECTIVE DATE: The interim rule became effective on October 15, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. I. Paul Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual), which is maintained by the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS), contains approved treatment schedules for agricultural commodities and is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1.

The PPQ Treatment Manual contains, among other things, cold treatment schedules for the treatment of fruits for the Mediterranean fruit fly (Medfly). Those schedules are prescribed to treat commodities for Medfly, and in some cases other pests, that occur in the regions from which the commodities originate.

In an interim rule effective and published in the **Federal Register** on October 15, 2002 (67 FR 63529–63536, Docket No. 02–071–1), we amended the PPQ Treatment Manual by extending the cold treatment schedules under which fruits are treated for Medfly and other specified pests. In addition, we amended the regulations for importing fruits and vegetables to provide that inspectors at the port of first arrival will sample and cut fruit from each shipment cold treated for Medfly to monitor the effectiveness of the new treatment.

Comments on the interim rule were required to be received on or before December 16, 2002. We received eight comments by that date. The comments were from State departments of agriculture, citrus growers, and foreign fruit shippers. While some commenters expressed general support for the actions taken in the interim rule, all of them raised specific concerns or objections regarding certain aspects of the rule. These comments are discussed below by topic.

Need for More Research

All of the commenters stated that APHIS needed to conduct more research to either support eliminating treatments of lower temperatures and shorter durations or to validate the efficacy of the new treatment schedules. Some commenters stated that APHIS had not followed a scientific procedure in developing the new treatment schedules and requested that APHIS conduct its own research to determine if adjustments to the schedules are necessary. One commenter suggested the rule be delayed for 6 months, during which time such research could be conducted.

Our analysis of the currently available data, as discussed in an analysis prepared by the USDA's Office of Risk Assessment and Cost-Benefit Analysis (ORACBA) (referred to below as the ORACBA analysis), indicates that treatments of shorter durations and lower temperatures will not be efficacious in achieving probit 9 security (*i.e.*, a survival rate of not more than 0.0032 percent of target pests). Although APHIS plans to conduct a comprehensive study involving shorter durations of exposure and a range of temperatures including lower temperatures, *i.e.*, 33 °F and lower, we do not presently have enough data available to support a probit 9 level of mortality at these temperatures and have removed them from the treatment schedule. Currently, there is no timeframe set for this study. It is a time-consuming process that will depend on the availability of resources. Until such time as this additional research is completed, we are confident that the new treatment schedule and fruit cutting provisions will appropriately mitigate the risk of introducing Medfly into the United States. Given the examination of the available cold treatment data, as discussed in the ORACBA analysis, and the fruit cutting provision as additional security, we see no need to delay implementation of the rule.

One commenter noted that the interim rule stated that APHIS was sponsoring research to address the application of cold treatment, but failed to discuss this research in detail. The commenter requested more information regarding the research APHIS indicated it would sponsor and a timeframe for completion.

APHIS's Center for Plant Health Science and Technology has contract work in progress to develop a fluid dynamics computational model of a cold treatment chamber that simulates those used in cold treatment. When completed, the model will allow us to visualize the actual flow of temperature throughout a cold treatment chamber. With the ability to visualize factors that influence temperature, such as the effects of hold construction, pallet stacking configurations, fruit variety, and hot spots (areas within the cold

treatment chamber where the temperature remains higher than other areas), we can better determine those areas within the cargo where treatment is most likely to fail in terms of reaching and maintaining target temperature. This information will provide a valid basis for determining sensor placement within the cargo and will optimize our ability to adequately monitor the treatment.

Following its development, the model will be tested in field trials. The South African Government has agreed to assist us with the validation and, if they desire, the Government of Spain could also be involved. The trials would be designed to determine whether or not the model could predict what the cooling rates and temperature fluctuations are at various selected locations during the treatment. To do this, a number of sensors would be installed in the cargo at the beginning of the treatment and, as usual, monitored throughout the voyage. Following the treatment, those data would then be compared with the data predicted by the model. Based on how closely the two data sets agree, the model might need adjustment, which would require further field validation trials.

One commenter requested that the original treatment schedules remain in place for all countries exporting fruit to the United States except Spain, until a need to modify the treatment was scientifically proven. This commenter also suggested that Spain conduct its own tests to determine if the Medfly infestation in imported Spanish clementines was the fault of the treatment schedule or some other variable that was not considered. Another commenter stated that Spain should conduct tests specifically regarding how various pests respond to cold treatment in its climate.

As a result of our examination of the currently available data, we do not believe there is evidence to support the continued use of the previous treatment schedule for the treatment of commodities from any country. Since the ineffectiveness of the previous treatment schedule may have contributed to the survival of Medfly larvae in imported Spanish clementines, we would not be appropriately mitigating the risk of Medfly introduction to the Unites States by only applying restrictions to Spain. In addition, APHIS cannot impose research requirements on other countries. We can, however, ensure that proper procedures are followed and the risk of pest introduction is appropriately mitigated. In this case, we are confident that the new treatment schedules and fruit cutting procedures at the port of first arrival effectively mitigate the risk of Medfly introduction.

Research Used by APHIS

One commenter stated that after reviewing the Australian data cited in the ORACBA analysis, there was insufficient evidence that extending the treatment period by 2 days and removing treatments at the lower temperatures would be sufficient to achieve probit 9 quarantine security for all fruits. According to the commenter, oranges or tangors (close relatives of clementines) would require 18 days of cold treatment at 35.6 °F and the Australian data indicated that 16 days at 35.6 °F is only sufficient for lemons. The commenter pointed out that in revised treatment schedule T107–a, APHIS allows 14 days at 34 °F, 16 days at 35 °F, and 18 days at 36 °F.

APHIS's decision to extend the cold treatment exposure time was not based on one particular piece of research, but rather, a number of factors including a technical panel's review, the ORACBA analysis (which uses a model to combine several different pieces of existing research), and our past experience with the interception of live Medfly larvae in cold treated clementines from Spain. The Australian work cited in the ORACBA analysis, which was primarily intended to provide the Japanese Government with data proving efficacy of cold treatment at temperatures above 33.8 °F so that Australian exported fruit that failed at 33.8 °F could meet Japanese phytosanitary requirements at higher temperatures, used only two temperature/time combinations, *i.e.*, 35.6 ± 0.9 °F and 37.4 ± 0.9 °F, in the study. The 35.6 ± 0.9 °F corresponded to at or below 36.5 °F and 37.4 ± 0.9 °F corresponded to at or below 38.3 °F. Using a high number of second-instar fruit fly larvae (the most tolerant stage), the Australians demonstrated that 18 days exposure of citrus fruit except lemons (which were exposed for 16 days) at 35.6 ± 0.9 °F was effective enough to achieve 100 percent mortality. At 37.4 ± 0.9 °F, this 100 percent mortality was achieved when citrus other than lemons was exposed for 20 days (18 days in the case of lemons). In our revised treatment schedule T107–a, we require 18 days at or below 36 °F and have not approved cold treatment above 36 °F, thus we are being somewhat more stringent than the Australians in this regard. Treatments of shorter durations are done at lower temperatures and we are confident that all treatment combinations will achieve probit 9 security.

One commenter stated that the Australian data reflect that Medfly larvae react differently to cold treatment in different types of citrus because the same cold treatment period did not result in the same mortality in various types of citrus tested. The commenter added that the ORACBA analysis included studies done only on apples and lemons. The commenter supported longer periods of cold treatment, but stated that the data provided by the ORACBA analysis did not directly address the question of whether 14 days of cold treatment at 34 °F is sufficient to provide an acceptable level of quarantine security for clementines or other varieties of oranges and tangors.

As shown in the PPQ Treatment Manual, our treatments are applicable to more than one host and are based on research performed on different hosts, not just citrus varieties or species. Hosts for which we have inadequate research data are not included in the treatment schedules. In addition, the research used in the ORACBA analysis was not conducted solely on apples and lemons. The analysis considered studies using a variety of fruits. For example, Nel (1936) used grapes, nectarines, peaches, and plums, and Hill *et al.* (1988) used Valencia and Navel oranges as host material.

The Patagonia Region

Some commenters from shipping organizations within the Patagonia region of South America expressed concern that the interim rule did not take into account the phytosanitary practices that are employed in that region. These commenters stated that the region has been shipping fruit to the United States under the previous treatment schedules for the past 20 years without a single detection of fruit fly larvae—dead or alive—and should not have to comply with the increased requirements of the new treatment schedule.

A few commenters stated that the Patagonia region should be recognized as an area free from fruit flies and should therefore not be subject to the revised treatment schedules. Some stated that the region has an effective fruit fly control and eradication program in place. In addition, recent trapping programs in the region have verified the total absence of all species of *Anastrepha* spp. fruit flies.

Prior to live Medfly larvae being intercepted in clementines from Spain in November and December 2001, there had never been multiple confirmed finds of live Medfly larvae in fruit of any kind that had been legally imported into the mainland United States from

any source since the previous cold treatment schedule was implemented more than 40 years ago. These interceptions forced us to reexamine the effectiveness of our cold treatment schedules. After an evaluation, a panel concluded that the previously approved cold treatment schedule provided a high level of Medfly mortality, but did not achieve a probit 9 level quarantine security in all cases. The panel's recommendation, which was supported by a quantitative analysis of available data, was that there was uncertainty as to whether treatments of less than 14 days and at temperatures in the 32–33 °F range would achieve the probit 9 level of security. Therefore, in order to protect the United States against the introduction of Medfly, we revised our Medfly treatment schedules based on the available scientific evidence in order to achieve a probit 9 level of security.

We have received data suggesting that certain areas in the Patagonia region are free of fruit flies. We are presently reviewing the information and working with Argentine officials to establish the boundaries of such areas. If, upon completion of our review, we determine that a change in the status of this region is warranted, we will initiate the necessary regulatory actions to recognize the fruit-fly-free status of the region.

General Comments

One commenter questioned APHIS's actions in implementing the new treatment schedule and resuming imports of Spanish clementines when APHIS acknowledged it did not know if the Medfly outbreak was due to faults in the cold treatment application process or with the treatment schedule itself. The commenter stated that both levels of larval infestation and an inadequate treatment schedule may have been responsible for the Medfly larvae discovery in Spanish clementines, and lengthening the treatment schedule only addressed one of these factors. Another commenter asked if APHIS planned to conduct any research on the point at which cold treatment fails, *i.e.*, if the level of larval infestation could overwhelm cold treatment.

We made revisions to the cold treatment schedules based on the recommendations of our technical panel and after considering the ORACBA analysis, which analyzed the available information in support of a probit 9 level of mortality. We also excluded those temperature/duration combinations from the revised treatment schedules for which enough scientific support was not available for probit 9 mortality. As an additional precaution in the Spanish clementine final rule (*see* 67 FR 64702–64739, Docket No. 02–023–4, published October 21, 2002), we required fruit cutting pre- and post-treatment in order to assess the effectiveness of the treatment. In the cold treatment interim rule that is the subject of this affirmation, we required only post-treatment fruit cutting to evaluate the effectiveness of the new treatment schedules. If during the post-treatment fruit cutting process we consistently find a number of dead larvae in a particular treated article or in treated articles from a particular region, we will reexamine if there is a need for fruit cutting prior to cold treatment taking place. For these reasons, we do not believe it is necessary to conduct the type of research suggested by the commenter. In addition, our inspections of cold treated fruit at the ports of arrival and past interception records (or lack thereof) demonstrate that cold treatment has been effective over the years in preventing Medfly introduction into the United States.

One commenter stated that the USDA should provide shippers with a written treatment verification protocol and shippers should be required to provide USDA documentation to demonstrate that cold treatment is administered as prescribed.

The regulations in § 319.56–2d, ''Administrative instructions for cold treatments of certain imported fruits,'' contain detailed requirements regarding the application and verification of cold treatments. The requirements for commodities cold treated in transit include maintaining a continuous, automatic temperature record under lock from at least four locations in each refrigerated compartment, providing charts from the temperature recording apparatus to an inspector at the port of arrival as proof the appropriate treatment schedule was followed, and requiring the responsible ship's officer to sign the temperature chart at least once during every 24-hour period.

One commenter stated that it was inappropriate for APHIS to resume imports of Spanish clementines based on the interim rule, which was made effective before the public had an opportunity to comment. In doing this, the commenter stated, APHIS did not follow a sound scientific process.

The extended treatment schedule first appeared in our proposed rule for Spanish clementines (*see* 67 FR 45922–45933, Docket No. 02–023–3, published March 22, 2002) as a result of comments made on the risk assessment that was prepared for that proposed rule and made available for comment in a notice published April 16, 2002, in the **Federal Register** (67 FR 18578–18579, Docket No. 02–023–1). A panel of experts subsequently concluded that there was uncertainty as to whether treatments of less than 14 days and at temperatures in the 32–33 °F range will achieve the probit 9 level of security; we therefore eliminated the two shortest duration treatments from the treatment schedule in the interim rule that is the subject of this affirmation. While we acknowledged that further research was needed, we implemented the new treatment schedule in addition to fruit cutting immediately in order to mitigate the risk of introducing Medfly into the United States. The changes to the cold treatment schedules, which were supported by the panel's research, were promulgated in an interim rule in order for those treatment schedules to be effective prior to the commencement of the Spanish clementine shipping season. However, the revised treatment schedules apply to all commodities cold treated for Medfly, not only Spanish clementines, as recommended by the panel based on its findings.

One commenter stated that APHIS should reassess its willingness to consider import requests for fresh fruits and vegetables from disease and pest-infested areas of the world. The commenter stated that a tremendous burden exists on the enforcement personnel of the Agency with having to deal with possible illegal importation of pests, and that by limiting importation to commodities grown where pests or diseases are present in small numbers, or not at all, would greatly reduce this burden.

APHIS has stated in the past that if zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country. There will always be some degree of pest risk associated with the movement of agricultural products; APHIS's goal is to provide the protection necessary to prevent the introduction and dissemination of plant pests into the United States. In this case, we believe that the revised treatment schedule and the fruit cutting provisions will achieve that goal.

One commenter suggested that APHIS review all cold treatment schedules in light of the discovery of at least one live larva of false codling moth in clementines from South Africa in 2002. There has been no overall review of the efficacy of cold treatment protocols in light of the interceptions of live insects following treatment.

In general, when pests are intercepted following treatment, APHIS investigates possible causes and responds appropriately. In the specific case of multiple live Medfly interceptions in clementines from Spain, APHIS halted clementine imports until we evaluated the situation, and the Secretary subsequently determined that it was no longer necessary to prohibit the importation or interstate movement of the fruits if a lengthened cold treatment was applied, along with other safeguards. In conducting our evaluation, we reviewed the cold treatment protocols for Medfly. APHIS' review of the cold treatment focused on the clementine shipments that contained live Medfly larvae and yielded no evidence that the treatment was improperly applied.

In response to interceptions of the false codling moth in cold treated citrus from South Africa, we have taken three actions to help ensure fruit with false codling moth do not enter the United States with cold treated fruit. First, fruit entering through preclearance programs will be rejected before treatment if false codling moth is found. Second, additional fruit cutting is being instituted in the preclearance program. Third, at the ports of entry, fruit cold treated for false codling moth has been moved to the highest risk level—the number of fruit being cut on arrival is 150 per container or 1,500 for bulk shipments. The interception noted by the commenter was an isolated event and is not reflective of failure of the cold treatment.

Other Comments

In addition to the comments discussed above, one commenter questioned the effectiveness of APHIS's enforcement of the limited distribution of Spanish clementines. We consider this comment to be outside the scope of this rulemaking because the requirements governing the distribution of Spanish clementines were not part of the interim rule.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866 and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the PPQ Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, by revising the cold treatment schedules under which fruits are treated for Medfly and other specified pests. Based on a review of those treatment schedules, we determined that it was necessary to extend the duration of cold treatment for Medfly [1] in order to protect against the introduction or dissemination of Medfly into and within the United States.

In addition, we amended the regulations for importing fruits and vegetables to provide that inspectors at the port of first arrival sample and cut fruit from each shipment cold treated for Medfly to monitor the effectiveness of the cold treatment. If a single live Medfly in any stage of development is found, the shipment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the prescribed cold treatments do not appear to be effective against Medfly, APHIS may suspend the importation of fruit from the originating country and conduct an investigation into the cause of the deficiency. The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, and interstate movement of any plant, plant product, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or dissemination of a plant pest into or within the United States.

In accordance with 5 U.S.C. 603, we performed an initial regulatory flexibility analysis for the interim rule, which was included in the interim rule and which invited submission of comments and data to assist in a comprehensive analysis of the economic effects of the interim rule on small entities. More specifically, we requested information on the number and kind of small entities that may incur benefits or costs from the implementation of the interim rule. No such information was submitted in the comments that we received. Based on the information we have, there is no basis to conclude that adoption of this rule will result in any significant economic impact on a substantial number of small entities. For this document, we have prepared a final regulatory flexibility analysis, which is set out below.

Fruit cutting and inspection charges associated with the interim rule will more than likely be small. APHIS, in a regulatory impact analysis (RIA) conducted for a rulemaking related to the importation of clementines from Spain (referred to below as the clementine RIA),[2] indicates that bulk shipments of fruit will more than likely pass inspection because the proportion of fruit infested with live Medfly will more than likely be extremely low after the application of the revised cold treatment schedules. In addition, the amount of fruit that is cut in the United States will more than likely be low relative to the value of imports, amounting to between 0.24 percent and 0.31 percent of gross import value. As a result, we state at the outset that costs associated with cutting and inspecting fruit will not have a significant negative economic impact on a substantial number of small importers.

The United States Small Business Administration (SBA) defines a small fruit importer (NAICS 424480, Fresh Fruit and Vegetable Merchant Wholesalers) as one with 100 or fewer employees. According to the most recent information available from the SBA's Office of Advocacy, a total of 5,403 firms comprised the ''Fresh Fruit and Vegetable Merchant Wholesalers'' category in 1999.[3] Seventy-eight percent of these firms (4,227) employed 20 or fewer individuals, and 99 percent of the firms had 500 or fewer employees. Clearly, the majority of fruit and vegetable wholesalers are small entities, having 100 or fewer employees. Although we lack specific information regarding the number of entities, large or small, that are likely to be affected by the rule (*i.e.*, U.S. importers of fruits from countries where Medfly is known to exist), we expect that the majority of those entities are small. However as we demonstrate below, economic impacts associated with the rule are not expected to be significant.

Import data for 1996–2000 for fruits that require cold treatment for Medfly under the revised schedule T107–a are shown in table 1. Import data are not reported separately for all of the fruits

[1] Certain commodities that are subject to the extended cold treatment, *i.e.*, commodities that are subject to treatment for Medfly and *Anastrepha* spp. (except *Anastrepha ludens*), will not necessarily be subject to additional days of cold treatment due to the fact that treatment for *Anastrepha* spp. is already longer than the extended Medfly treatment requires. Thus, such commodities may be subject to 1 additional day of treatment, or none at all, depending on the temperature at which they are held. Nevertheless, for the purposes of this analysis, we assume that all commodities will be subject to additional days of treatment.

[2] ''Amending Import Rules for Clementines from Spain: Final Regulatory Impact Analysis.'' Animal and Plant Health Inspection Service, Riverdale, MD. Available on the Internet at *http://www.aphis.usda.gov/lpa/issues/clementine/clementines.html*.

[3] *See http://www.sba.gov/advo/stats/us99_n6.pdf.*

that are subject to cold treatment for Medfly, so similar fruits are combined into categories in table 1.[4] Import data for litchis, pomegranates, and carambola are not available, and there were no imports of mountain papaya and very few imports of cherries that required cold treatment for Medfly during 1996–2000; therefore, data for these fruits are not included in table 1.

In order to estimate costs associated with extending Medfly cold treatment periods, it is necessary to estimate 2002 import levels, because additional cold treatment expenses vary with the amount of imported fruit. We base the 2002 import level for ethrogs on the 5-year average, because annual growth rates were extremely volatile during 1996–2000. We base the 2002 import level for pears and quinces on the 2000 import level because the import data provided little guidance regarding a likely value for 2002. We base the 2002 import level for clementines, ortaniques, and tangerines on the 2000 import level and annual import growth in 2000 because growth rates were highly volatile during the preceding years and imports apparently leveled off in 1999.[5] We report estimates of 2002 import levels for these and the remaining fruits in table 1.

TABLE 1.—FRUIT IMPORTS THAT ARE SUBJECT TO T107 COLD TREATMENT FOR MEDFLY *

Commodity	Average import level (1,000 kg)	Weighted import level ($/kg)	Average import value ($1,000)	Percentage of world imports	Expected imports 2002 (1,000 kg)
Apple	4,128	$0.86	$3,550	2.52	[1] 4,128
Apricot	4	2.48	10	0.23	[1] 4
Clementine, ortanique, and tangerine	52,176	1.43	74,354	86.32	[2] 95,952
Ethrog	160	2.79	446	32.17	[1] 160
Grape	33,399	426.18	14,234	3.29	[3] 52,369
Grapefruit and pummelo	356	0.91	323	3.31	[1] 356
Kiwi	6,080	1.05	6,384	6.91	[1] 6,080
Orange	6,361	1.07	6,776	8.34	[1] 6,361
Peach and nectarine	10	0.95	10	0.02	[3] 17
Pear and quince	35,915	0.96	34,478	44.81	[4] 58,228
Plum, loquat, persimmon, and plumcot	124	0.99	123	0.54	[4] 513

* Imports, prices, and percentages of world imports are averages for 1996–2000. Prices are weighted averages converted to 2002 dollars, using the consumer price index for fresh fruit (from U.S. Bureau of Labor Statistics). Data are from USDA-FAS, ''U.S. imports and import values for various fruit,'' except for grapes, which are from Bureau of Census data: 080610, U.S. fresh grape imports. Quantity data for grapes are in cubic meters; grape prices are in dollars per cubic meter.

[1] Five-year average.

[2] Based on the 2000 import level and annual import growth for 2000.

[3] Based on the 2000 import level and average annual import growth for 1999 and 2000.

[4] The 2000 import level.

As shown in table 1, very low percentages of apple, apricot, cherry, grape, grapefruit and pummelo, kiwi, mountain papaya, orange, peach and nectarine, and plum, loquat, persimmon, and plumcot imports undergo cold treatment for Medfly; as a result, the interim rule will likely not affect a substantial number of small importers of these fruits. Thirty-two percent of ethrogs, 44 percent of pears and quinces, and 86 percent of clementines, ortaniques, and tangerines must be cold treated for Medfly. Therefore, the interim rule may affect a substantial number of U.S. importers of these fruits, and we estimate economic impacts for these fruits. We do not estimate economic impacts for the remaining fruits because it is unlikely that a substantial number of small importers of those fruits will be significantly affected by the interim rule. Furthermore, economic impacts for ethrogs, pears and quinces, and clementines, ortaniques, and tangerines can be considered as representative of the economic impacts for the other fruits.

The overwhelming majority of cold-treated fruit imports are treated aboard ship while in transit to the United States, although treatment can also be carried out at authorized ports. When cold treatment is conducted in transit, the treatment period must be met before unloading. For countries with sailing times to the United States longer than the extended treatment periods, the interim rule will only lead to increases in cold treatment costs. For countries with sailing times to the United States shorter than the extended treatment periods, the interim rule will lead to increases in cold treatment and shipping costs. To account for the extended treatment periods in these instances, vessels will either adjust sailing times to coincide with the length of the treatment period, sit at the dock, or go into anchorage near the U.S. port. As a result, labor, fuel, and opportunity costs associated with delaying shipments of other cargoes will more than likely be added to shipping charges.

Costs associated with extending treatment periods have been estimated for clementine imports from Spain in the clementine RIA cited earlier in this analysis. We use the same parameters and methods to estimate additional cold treatment expenses for clementines, ortaniques, and tangerines. It costs approximately $0.50 per day to cold treat a pallet of fruit at U.S. ports. This provides an approximate upper bound on cold treatment costs because most fruits are cold treated in transit, which may be less expensive on average. We therefore use this as our unit cost to calculate cold treatment expenses in the analysis.

Historically, Spain has exported clementines, ortaniques, and tangerines to the United States under the 11 day (33 °F) or 12 day (34 °F) cold treatment schedules. As a result, Spanish clementines, ortaniques, and tangerines shipped to the United States will undergo at least 2 to 3 days (34 °F) of

[4] USDA–FAS, ''U.S. imports and import values for various fruit.'' Available through the U.S. Trade Internet System at: *http://www.fas.usda.gov/ustrade/*.

[5] In particular, expected imports for 2002 are given by $x(1 + y)^2$, where x denotes the import value for 2000 and y denotes import growth for 2000.

extra cold treatment. We assume the average bulk shipment will undergo an additional 2.5 days of cold treatment. The following daily charges will likely be added to the cost of shipping clementines, ortaniques, and tangerines to the United States: $10,000 chartering fee (although this fee is highly variable depending on the availability of bulk ships); $2,160 docking fee ($0.27 per metric ton with an average ship size of 8,000 metric tons); $990 fuel at anchorage fee (five to six tons at $180 per ton); and $0.50 per pallet cold treatment fee.

These cost figures are based on recent charges quoted by a representative from Lauritzen, a company that specializes in the bulk shipment of fruit. Ninety percent of clementines, ortaniques, and tangerines shipments come into the United States in bulk shipments. Using a bioeconomic model, which incorporates variation in clementines designated for export to the United States and fruit cutting and rejection of shipments in Spain according to farm-level variation in numbers of fruit infested with Medflies, additional shipping and cold treatment expenses averaged $1.23 million (± $15,000, with 95 percent confidence). U.S. imports of clementines averaged 88,461 metric tons (± 1,042 metric tons). As a result, total regulatory expenses were $13.92 per metric ton, or $5.57 per metric ton per day. Average import price in the United States was $1.05 per kilogram, thus import value averaged $92.65 million. Total regulatory expenses were therefore 1.33 percent of gross value.

These estimates can be used to estimate regulatory costs associated with shipments of clementines, ortaniques, and tangerines from Spain, Morocco, Israel, and Italy. Applying the $13.92 per metric ton fee to 95,952 metric tons (table 1), total regulatory costs, assuming fruits are cold treated for an additional 2.5 days on average, are $1.34 million. To determine whether these costs are significant, we estimated the value of clementine, ortanique, and tangerine imports for 2002 using the Spanish clementine import demand curve estimated in the clementine RIA. Plugging in the expected 2002 import level and converting the price to 2002 dollars using the consumer price index for oranges, including tangerines,[6] gives a price of $0.84 per kilogram.[7] Using this expected price, the expected value of imports for 2002 is approximately $78.47 million. Additional treatment expenses associated with the interim rule amount to only 1.7 percent of this total and, as a result, the interim rule will likely not have a significant negative economic impact on small importers of clementines, ortaniques, and tangerines, even in the unlikely event that importers bear the entire economic burden.[8]

We use the same parameters and methods to estimate additional cold treatment expenses for ethrogs, pears, and quinces under the assumption that these fruits and clementines, ortaniques, and tangerines have roughly the same dimensions. For ethrogs, assuming an additional 2.5 days of cold treatment and shipping expenses, total regulatory costs for 2002 came to $2,227. This amounts to only 0.5 percent of the estimated value of ethrog imports for 2002 ($446,400), which is based on the estimated import level (160 metric tons) and the weighted average price ($2.79 per kilogram) during 1996–2000 (*see* table 1). As a result, the interim rule will more than likely not have a significant negative economic impact on small importers of ethrogs.

For pears and quinces, additional cold treatment expenses for 2002 came to $1.3 million, which amounts to 2.32 percent of the estimated value of pear and quince imports for 2002 ($56 million), based on the estimated import level (58,228 metric tons) and weighted average price ($0.96 per kilogram) during 1996–2000 (*see* table 1). During 1996–2000, 95 percent of the pear and quince imports from regions with Medfly came from Argentina, and the remainder came from China, South Africa, and Spain. The direct sailing time from Argentina is approximately 10 days, which is 4 days less than the shortest treatment period. As a result, the interim rule will add an additional 4 days of cold treatment and shipping charges for shipments of pears and quinces to the United States from Argentina. Total regulatory expenses for 2002 are $1.30 million, which amounts to 2.32 percent of the estimated value of pear and quince imports for 2002 ($56 million), based on the estimated import level (58,228 metric tons) and weighted average price ($0.96 per kilogram) during 1996–2000 (table 1).

Countries that import citrus from the United States may change their cold treatment guidelines to reflect the changes being made to our cold treatment requirements; however, such changes would only affect U.S. exporters in the event of a Medfly outbreak in the continental United States. Indirect impacts of the interim rule, therefore, are highly uncertain and depend on the probability that Medflies are introduced and become established, as well as the regional extent of outbreaks and the efficiency with which they are controlled and eradicated. Because potential economic impacts on U.S. fruit importers are low relative to import values and because Medfly outbreaks within the United States will more than likely be confined to particular areas and eradicated efficiently, the interim rule will likely not have a significant negative economic impact on a substantial number of small exporters in the United States. However, in the event of a Medfly outbreak, exporters who wish to export affected commodities from areas quarantined for Medfly should expect to pay an additional $5.57 per metric ton per day of extra cold treatment. For example, exports from quarantined areas on the U.S. west coast to Asia would have to undergo an additional 2.5 days of cold treatment; therefore, each metric ton of affected produce would cost an additional $13.92 to ship. The same cost schedule applies to affected commodities on the U.S. east coast destined for European markets. Because shipment times from the U.S. west coast to Europe and from the U.S. east coast to Asia are longer than the revised cold treatment periods, the interim rule would have no impact on the cost schedules associated with those exports.

Summary

In our analysis, we estimate additional treatment expenses associated with the interim rule as being between 0.5 percent (for ethrogs) and 2.32 percent (for pear and quince) of the expected value of imports for 2002. Similarly, the amount of fruit that is cut in the United States will more than likely be low relative to the value of imports, amounting to between 0.24 percent and 0.31 percent of gross import value. Based on our analysis, we have no reason to expect that the requirements of the interim rule will have a significant economic impact on a substantial number of small U.S. fruit importers, including small importers of ethrogs, clementines, ortaniques, pears, quinces, and tangerines. We are unable to definitively state that this will be the case, however, because we lack specific information on the number and kind of small entities that may incur benefits or costs from the implementation of the

[6] U.S. Bureau of Labor Statistics, ''Consumer price index—oranges, including tangerines, not seasonally adjusted.'' Available on the Internet at *http://data.bls.gov/labjava/outside.jsp?survey=cu.*

[7] The y-intercept of the demand curve is $3.71 and the coefficient on kilograms of imports is −3.01E–08.

[8] This would be the case, for example, if import demand was perfectly inelastic and export supply was perfectly elastic. Available data indicate that import demand is elastic and that export supply is not perfectly elastic.

interim rule, despite our request in the interim rule for such information.

The interim rule contained no new information collection requirements under the Paperwork Reduction Act.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Chapter III

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR parts 300, 301, and 319 and that was published at 67 FR 63529–63536 on October 15, 2002.

Authority: 7 U.S.C. 166, 450, and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 *note*).

Done in Washington, DC, this 27th day of January, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–2023 Filed 1–30–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2002N–0278]

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Correction

ACTION: Interim final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting an interim final rule that appeared in the **Federal Register** of October 10, 2003 (68 FR 58974). The document issued an interim final regulation that requires the submission to FDA of prior notice of food, including animal feed, that is imported or offered for import into the United States. The document was published with some errors. This document corrects those errors.

DATES: Effective February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Ralston, Office of Regulatory Affairs, Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6230.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–25877, appearing on page 58974 in the **Federal Register** of Friday, October 10, 2003, the following corrections are made:

§ 1.276 [Corrected]

■ 1. On page 59070, in the third column, in § 1.276(b)(3), at the end of the sentence, remove the phrase ''in which the article will be mail'' and replace it with the phrase ''from which the article is mailed''.

§ 1.279 [Corrected]

■ 2. On page 59072, in the first column, in § 1.279(f), in the first sentence, after ''A copy of the confirmation'', insert a comma.

§ 1.280 [Corrected]

■ 3. On page 59072, in the first column, in § 1.280(a), in the fourth sentence, remove the phrase ''paragraph (d) of this section applies'' and replace it with the phrase ''paragraphs (c) and (d) of this section apply''.

■ 4. On page 59072, in the first column, in § 1.280(c), in the first sentence, remove the phrase ''and FDA Web site at *http://www.fda.gov*—see Prior Notice'' and replace it with the phrase ''or *http://www.cfsan.fda.gov/~furls/fisstat.html*, whichever FDA determines is available'' and, in the third sentence, remove the phrase ''is listed at *http://www.fda.gov*—see Prior Notice—PN System Interface'' and replace it with the phrase ''will be listed at *http://www.access.fda.gov* or *http://www.cfsan.fda.gov/~furls/fisstat.html*, whichever FDA determines is available''.

■ 5. On page 59072, in the second column, in § 1.280(d), in the first sentence, remove the phrase ''*http://www.fda.gov*'' and replace it with the phrase ''*http://www.cfsan.fda.gov/~fulrs/fisstat.html*'' and, in the third sentence, remove the phrase ''is listed at *http://www.fda.gov*—see Prior Notice'' and replace it with the phrase ''will be listed at *http://www.access.fda.gov* or *http://www.cfsan.fda.gov/~furls;fisstat.html*, whichever FDA determines is available''.

§ 1.281 [Corrected]

■ 6. On page 59072, in the third column, in § 1.281(a)(6), in the second sentence, remove the comma after the word ''storage''.

■ 7. On page 59072, in the third column, in § 1.281(a)(7), in the second sentence remove the comma after ''consolidated'' and insert the phrase ''and the submitter does not know'' after the phrase ''if the article has been consolidated''.

■ 8. On page 59072, in the third column, in § 1.281(a)(9), in the second sentence, remove the comma after the word ''storage''.

■ 9. On page 59072, in the third column, in § 1.281(a)(12), in the third sentence, remove the word ''owner'' and replace it with the word ''importer''.

■ 10. On page 59073, in the first column, in § 1.281(a)(13), in the third sentence, remove the word ''importer'' and replace it with the word ''owner''.

■ 11. On page 59073, in the first column, in § 1.281(b), italicize the phrase ''Articles arriving by international mail''.

■ 12. On page 59073, in the second column, in § 1.281(b)(6), remove the comma after ''consolidated'' and insert the phrase ''and the submitter does not know'' after the phrase ''if the article has been consolidated''.

■ 13. On page 59073, in the third column, in § 1.281(c), in the third full sentence, remove ''§ 1.283(a)(ii)'' and replace it with ''§ 1.283(a)(1)(ii)''.

■ 14. On page 59074, in the first column, in § 1.281(c)(7), in the second sentence, remove the comma after the word ''consolidated'' and insert the phrase ''and the submitter does not know'' after the phrase ''if the article has been consolidated''.

■ 15. On page 59074, in the first column, in § 1.281(c)(13), in the first sentence, remove the phrase ''if different from the owner'' and replace it with the phrase ''if different from the importer'' and in the third sentence, remove the word ''owner'' and replace it with the word ''importer''.

§ 1.283 [Corrected]

■ 16. On page 59075, in the first column, in § 1.283(a)(1)(ii), in the second sentence, insert the word ''of'' after the word ''port'' the second time it appears.

■ 17. On page 59075, in the first column, in § 1.283(a)(3), in the first sentence, remove the word ''underhold'' and replace it with the words ''under hold'' and revise the second sentence to read ''This segregation must take place where the article is held''.

■ 18. On page 59075, in the second column, in § 1.283(a)(6), in the first full sentence, remove the phrase ''paragraph (a)(7)'' and replace it with the phrase ''paragraph (a)(5)''.

■ 19. On page 59075, in the second column, in § 1.283(b), in the second full sentence, after the word ''individual'', insert the words ''does not''and remove the word ''shall'' and replace it with ''may''.

■ 20. On page 59075, in the second column, in § 1.283(c), italicize the paragraph heading ''Post-Refusal Prior Notice Submissions''.

■ 21. On page 59075, in the second column, in § 1.283(d), italicize the paragraph heading ''FDA Review After Refusal''.

■ 22. On page 59075, in the second column, in § 1.283(d)(1), in the first sentence, remove ''§ 1.276(b)(4)'' and replace it with ''§ 1.276(b)(5)''.

■ 23. On page 59075, in the third column, in § 1.283(e), italicize the phrase ''*International Mail*'' and, in the second sentence, remove ''section 801(m)'' and replace it with ''section 801(m)(1)''.

§ 1.284 [Corrected]

■ 24. On page 59076, in the first column, in § 1.284(b)(1), capitalize the first letter of the word ''federal''.

§ 1.285 [Corrected]

■ 25. On page 59076, in the second column, in § 1.285(b), insert the phrase ''under section 801(l) of the act'' after the word ''hold''.

■ 26. On page 59076, in the second column, in § 1.285(d), in the paragraph heading, remove the word ''refused'' and replace it with the word ''held''; in the first sentence, insert the phrase ''of the act'' after the phrase ''section 801(l)'' and delete the phrase ''of the act'' after the word ''hold''; and, in the second sentence, revise the phrase ''within the port of arrival where the article is held, if different'' to read ''where the article is held''.

■ 27. On page 59076, in the second column, in § 1.285(f), in the heading, remove the word ''refusal'' and replace it with the word ''hold''.

■ 28. On page 59076, in the second column, in § 1.285(g), in the first sentence, remove the phrase ''subsection (g)'' and replace it with the phrase ''subsection (f)''.

■ 29. On page 59076, in the third column, in § 1.285(i)(1), insert the word ''after'' following the words ''the facility must be registered and''.

■ 30. On page 59076, in the third column, in § 1.285(j)(1), in the first sentence, insert the phrase ''of the act'' after the phrase ''section 801(l)''.

■ 31. On page 59076, in the third column, in § 1.285(j)(3), remove the phrase ''see Prior Notice'' and replace it with the phrase ''see Food Facility Registration''.

■ 32. On page 59077, beginning in the second column, in § 1.285(l)(1) and (2), remove the phrase ''refused under section 801(m)(1)'', where it appears, and replace it with the phrase ''placed under hold under section 801(l)'' and remove the phrase ''refused admission under section 801(m)(1)'', where it appears, and replace it with the phrase ''subject to hold under section 801(l)''.

Dated: January 17, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–1592 Filed 1–30–04; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–257–200402(a); FRL–7616–2]

Approval and Promulgation of Implementation Plans—Tennessee: Knox County Maintenance Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Tennessee State Implementation Plan (SIP) submitted by the Tennessee Department of Environment and Conservation (TDEC) on August 20, 2003. This SIP revision satisfies the requirement of the Clean Air Act as amended in 1990 (CAA) for the 10-year update of the Knox County 1-hour ozone maintenance plan.

DATES: This direct final rule is effective April 2, 2004 without further notice, unless EPA receives adverse comment by March 3, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted by mail to: Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections I.B.1 through 3 of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Anne Marie Hoffman, Air, Pesticides & Toxics Management Division, Air Planning Branch, Regulatory Development Section, Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Ms. Hoffman's phone number is 404–562–9074. She can also be reached via electronic mail at *hoffman.annemarie@epa.gov* or Lynorae Benjamin, Air, Pesticides & Toxics Management Division, Air Planning Branch, Air Quality Modeling & Transportation Section, Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Ms. Benjamin's phone number is 404–562–9040. She can also be reached via electronic mail at *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under TN–257. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment, at the State Air Agency. Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 401 Church Street, Nashville, TN 37243–1531.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulation.gov web site located at *http:/*

/www.regulations.gov where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking TN–257'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *hoffman.annemarie@epa.gov.* Please include the text ''Public comment on proposed rulemaking TN–257'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking TN–257'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, 12th floor, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding federal holidays.

C. How Should I Submit CBI to the Agency?

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In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. 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 regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

The air quality maintenance plan is a requirement of the 1990 CAA for

nonattainment areas that come into compliance with the national ambient air quality standards (NAAQS). Knox County was designated as nonattainment for the 1-hour ozone NAAQS on November 6, 1991. After demonstrating that the area had air quality monitoring data showing compliance with the 1-hour ozone NAAQS, the State of Tennessee requested that the EPA redesignate Knox County to attainment for the 1-hour ozone standard on August 26, 1992. Included with this request was a 10-year air quality maintenance plan covering the years 1994 to 2004. This plan was developed in accordance with the appropriate guidelines. The EPA published a **Federal Register** notice approving this plan and the redesignation to attainment on September 27, 1993 with an effective date of October 27, 1993 (58 FR 50271).

Subsequent revisions to this maintenance plan have been made. The current plan was approved by the EPA on August 5, 1997, and became effective on October 6, 1997 (62 FR 42068). TDEC revised the original plan to update emissions inventories reflecting more accurate emission estimates and to define specific Motor Vehicle Emissions Budgets (MVEB).

This SIP revision satisfies the requirement of the CAA for the 10-year update of the Knox County 1-hour ozone maintenance plan. Changes to the current maintenance plan include revisions to the emissions inventory for both on-road and non-road mobile sources, improved methodologies contained in the MOBILE6 and NONROAD emission models. New emissions data for both the base year (attainment year) and the projected years (2004 and 2014) are calculated. Also, updated MVEB in support of the transportation conformity process, are defined for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for the county. The updated budgets for 2004 replace previous MVEB contained in the first maintenance plan, which were based on an older emissions estimate using MOBILE5 emission factors for on-road motor vehicles. Additionally, this maintenance plan update provides a new MVEB for the year 2014. EPA has determined that the MVEB in the State Implementation Plan are adequate for transportation conformity purposes. The availability of the SIP with MVEB for 2014 was placed on EPA's adequacy web page on August 27, 2003. No request for this SIP submittal or adverse comments were received by the end of the public comment period on October 3, 2003. In this action, EPA finds the 2014 MVEB adequate for transportation conformity, and is approving the MVEB for 2004 and 2014. Note, since the 2004 MVEB are replacing existing MVEB, these budgets are not subject to EPA's Adequacy process.

III. Analysis of State's Submittal

On August 20, 2003, the TDEC submitted revisions to the Tennessee SIP for the new 10-year maintenance plan to provide a 10-year extension to the maintenance plan as required by section 175A(b) of the CAA as amended in 1990. The underlying strategy of the maintenance plan is to maintain compliance with the 1-hour ozone standard by assuring that current and future emissions of VOC and NO_X remain at or below attainment year emission levels. Actual emissions for the 1990 ozone season and estimated emissions of ozone precursors (*i.e.*, VOC and NO_X) for Knox County during 2004 and 2014 are provided in the following table.

Projected Emissions

VOLATILE ORGANIC COMPOUNDS

[Tons per day]

VOC	Category	1990 base year	2004	2014
Knox	Stationary Point	8.06	8.90	10.26
	Stationary Area	28.82	30.90	32.48
	On-Road Mobile	40.84	21.27	10.51
	Non-Road Mobile	9.81	10.52	11.06
	Biogenic	32.43	32.43	32.43
Total		119.96	104.02	96.74
Safety Margin	Calculated as 1990 base-year minus projected year total.		15.94	23.22

NITROGEN OXIDES

[Tons per day]

NO_X	Category	1990 base year	2004	2014
Knox	Stationary Point	8.96	11.73	13.17
	Stationary Area	3.66	3.92	4.13
	On-Road Mobile	37.62	31.10	13.27
	Non-Road Mobile	9.77	10.48	11.01
	Biogenic	0.00	0.00	0.00
Total		60.01	57.23	41.58
Safety Margin	Calculated as 1990 base-year minus projected year total.		2.79	18.43

Motor Vehicle Emissions Budgets

Section 176(c) of the CAA, 42 U.S.C. 7506(c), states that transportation plans, programs, and projects must conform to an approved implementation plan. Pursuant to 40 CFR part 93 (*i.e.*, the Transportation Conformity Rule) a specific emissions budget is defined for VOC and NO_X for Knox County. The MVEB, based on the on-road mobile sources, are to be used by the local metropolitan planning organizations and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long term maintenance of acceptable air quality in Knox County.

The MVEB are defined for the county, for 2004 and 2014, in the State's submittal. The values, for both years, are equal to the 2004 on-road mobile source projected level of emissions plus an allocation from the safety margin. This allocation from the safety margin accounts for uncertainty in the projections and is available because of significant reductions of VOC and NO_X that have occurred, and are projected to occur, primarily from mobile sources. The MVEB are constrained in each of the budget years to assure that the total emissions (*i.e.*, all source categories) do not exceed the 1990 attainment year emissions. In no case are the projected total emissions (*i.e.*, all source categories and including the allocation from the safety margin to the on-road mobile source category), for any year, greater than the attainment year emissions totals for either VOC or NO_X. Under 40 CFR 93.101 the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. The safety margin credit can be allocated to the transportation sector, however the total emission level must stay below the attainment level. The following table defines the MVEB for Knox County.

MVEB

[Tons per day]

County	Pollutant	2004	2014
Knox	VOC	29.24	22.12
	NO_X	33.89	22.49

For the year 2004, the safety margins were 15.94 tpd for VOC and 2.79 tpd for NO_X. After partial allocation of the VOC safety margin and full allocation of the NO_X safety margin to the MVEB, the remaining safety margins in 2004 are 7.97 tpd for VOC and 0.00 tpd for NO_X. In 2014, the safety margins were 23.22 tpd for VOC and 18.43 tpd for NO_X. After partial allocation of the safety margin to the MVEB, the remaining safety margins in 2014 are now 11.61 tpd for VOC and 9.22 tpd for NO_X.

IV. Final Action

EPA is approving the aforementioned changes to the State of Tennessee SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 2, 2004 without further notice unless the Agency receives adverse comments by March 3, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 2, 2004 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 2, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 20, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

■ 2. Section 52.2220(e), is amended by adding a new table, ''EPA Approved Tennessee Non-Regulatory Provisions,'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) EPA-Approved Tennessee Non-Regulatory Provisions

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
Revision to Maintenance Plan Update for Knox County, Tennessee.	Knox County, TN	July 16, 2003	2/4/04 [Insert citation of publication].	

[FR Doc. 04–1970 Filed 1–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH158–1a; FRL–7616–4]

Redesignation and Approval of Ohio Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is redesignating Lucas County, Ohio to an attainment area for sulfur dioxide (SO_2). In addition, EPA is approving Ohio's plan for continuing to attain the SO_2 standards in Lucas County. EPA is further approving selected State emission limits. Ohio requested these actions on March 25, 1999.

DATES: This rule is effective on March 18, 2004, unless the EPA receives relevant adverse written comments by March 3, 2004. If EPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send comments to: J. Elmer Bortzer, Acting Chief, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, according to the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section. Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information
II. Background and Criteria for Review
III. Review of Emission Limit Revisions
IV. Review of Redesignation Request
A. Has the area attained the standards?
B. Has EPA fully approved the applicable implementation plan?
C. Is attainment due to permanent and enforceable emission reductions?
D. Does the maintenance plan assure continued attainment?
E. Has the State met the requirements of section 110 and part D?
V. Rulemaking Action
VI. Statutory and Executive Order Reviews

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under ''Region 5 Air Docket OH158''. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air

and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

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i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *bortzer.jay@epa.gov.* Please include the text ''Public comment on proposed rulemaking Region 5 Air Docket OH158'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to regulations.gov at *http://www.regulations.gov,* then click on the button ''TO SEARCH FOR REGULATIONS CLICK HERE'', and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

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3. *By Hand Delivery or Courier.* Deliver your comments to: Jay Bortzer, Acting Chief, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

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II. Background and Criteria for Review

On March 25, 1999, Ohio requested SO_2 emission limit revisions for three facilities in Lucas County and requested that EPA redesignate Lucas County to attainment for SO_2. The requested emission limit revisions include approval of state limits for two facilities and removal of limits for a third facility that has shut down.

The facilities affected by these requested limit revisions are currently subject to federally promulgated limits. In 1976, in response to the absence of federally enforceable SO_2 emission limits in Ohio, EPA promulgated a Federal implementation plan (FIP) including SO_2 emission limits for the State (41 FR 36324, with assorted subsequent amendments). Ohio subsequently submitted statewide SO_2 regulations, most of which EPA approved in 1981 and 1982. Nevertheless, the three facilities here

remain subject to FIP limits. The requested revisions would result in a Lucas County SIP that relies entirely on State-adopted limits.

Criteria for judging these limits are given in a memorandum from the Director of the Air Quality Management Division of the Office of Air Quality Planning and Standards to the Director of the Air and Radiation Division of Region 5, dated September 28, 1994. In brief, EPA may approve state limits to replace the federally promulgated limits provided the state limits are at least as stringent as the federally promulgated limits and provided there is no evidence that the original attainment demonstration underlying the limits is invalid. Further discussion of these criteria is given below.

The criteria for redesignating areas from nonattainment to attainment are given in section 107(d)(3)(E) of the Clean Air Act. This section includes 5 criteria:

1. Has the area attained the standards?
2. Has EPA fully approved the applicable implementation plan?
3. Is attainment due to permanent and enforceable emission reductions?
4. Does the maintenance plan assure continued attainment?
5. Has the State met the requirements of section 110 and part D?

EPA guidance on implementing these criteria is given in a memorandum from the Director of the Air Quality Management Division to the EPA regional air division directors dated September 4, 1992. Lucas County poses complex circumstances, posing special issues in applying these criteria. For clarity, further discussion of these criteria is included as part of the review of Ohio's request.

III. Review of Emission Limit Revisions

EPA approved the attainment plan and most limits for Lucas County on June 30, 1982 (47 FR 28375). However, at Ohio's request, EPA did not rulemake at that time on limits for facilities owned by Sun Oil Company, Gulf Oil Company, Phillips Chemical, and Coulton Chemical. Consequently, the FIP limits remained in effect for these facilities.

On March 3, 1998, EPA approved State limits for the Sun Oil Company facility (*see* 63 FR 15091). For the other three facilities, FIP limits remain in effect. Ohio is now requesting EPA rulemaking on State limits for the Gulf Oil facility and for the former Coulton Chemical facility (now owned by Marsulex, Inc.). Ohio requested that EPA delete limits in the FIP for Phillips Petroleum Company's Philblack facility, since that facility no longer exists. These requested revisions would result in the state implementation plan for SO_2 in Lucas County relying entirely on federally approved state limits.

Criteria for judging these limits are given in a memorandum from the Director of the Air Quality Management Division of the Office of Air Quality Planning and Standards to the Director of the Air and Radiation Division of Region 5, dated September 28, 1994. The criteria are:

1. That the FIP demonstrated the limits were adequately protective at the time of promulgation.
2. There is no evidence now that the FIP and associated emission limits are inadequate to protect the SO_2 national ambient air quality standards.
3. This is not a relaxation of existing emission limits.

EPA concludes that these criteria are met. The original FIP limits reflect a modeling analysis that demonstrated that these limits would suffice to attain the standards. EPA has no evidence that these limits are inadequate. For the Gulf Oil and former Coulton Chemical facilities, the state limits are essentially identical to corresponding FIP limits. Since the Philblack facility no longer operates, the FIP limits are irrelevant in assessing whether the State limits provide equal air quality protection as the FIP.

EPA is not revising the FIP in this rulemaking. EPA anticipates removing the FIP limits for the Philblack facility in a future rulemaking that will also address other FIP limits that EPA expects to become moot due to approval of corresponding state limits. Despite the temporary continuance of FIP limits for this shut down facility, today's action provides that Ohio has a fully approved state plan providing for attainment of the SO_2 standards in Lucas County.

IV. Review of Redesignation Request

A. Has the Area Attained the Standards?

The first prerequisite for a redesignation to attainment, given in Clean Air Act section 107(d)(3)(E)(i), is that ''[EPA] determines that the area has attained [the standard]''. For some pollutants, this determination relies solely on air quality monitoring data. However, for SO_2, monitoring data alone is generally insufficient to assess an area's attainment status. EPA's guidance memorandum of September 4, 1992, states that for SO_2 and specified other pollutants, ''dispersion modeling will generally be necessary to evaluate comprehensively sources' impacts.''

Typically, attainment planning for SO_2 involves dispersion modeling used to demonstrate that the emission limits adopted by the state suffice to assure attainment. With such modeling available, EPA can generally determine an area to be attaining the standard without further modeling, provided monitoring data also support that determination. If all sources are emitting at or below the levels included in the modeling done during attainment planning, then clearly similar modeling using the lower actual emission rates would show the area to be attaining the standard by a larger margin.

The situation in Lucas County was more complicated. At the time of Ohio's request for redesignation, available evidence indicated that an important SO_2 source in Lucas County, owned by Marsulex, was emitting more than the emissions level included for that source in the State's attainment demonstration. This emission increase arose from an expansion in production without a corresponding decrease in emissions per unit of production. This in turn indicated that the County may have been violating the SO_2 air quality standard. More precisely, the normal means of finding an area to be attaining the SO_2 standards, by finding that sources are emitting below the levels found by dispersion modeling to assure attainment, could not be applied here. Since EPA did not have a full assessment of air quality under those circumstances in Lucas County (and, in fact, the criteria for such an assessment are unclear), EPA was unable to determine that the area was attaining the standard.

More recently, Marsulex modified its process and reduced emissions for the facility to levels below those included for it in the State's attainment demonstration for Lucas County. Ohio in its submittal stated that other major SO_2 sources are complying with applicable SIP limits, such that these facilities would also be emitting less than the levels included in the approved attainment demonstration. This fact (and the absence of monitored violations) means that EPA may now determine that the area is attaining the standard on the basis that emissions are lower and therefore air quality is better than with the modeled attainment demonstration.

B. Has EPA Fully Approved the Applicable Implementation Plan?

The principal relevant element of the SIP required under part D of Title I of the Clean Air Act for SO_2 in Lucas County is a plan for attaining the standards. As noted in a previous section, EPA approved Ohio's plan for SO_2 in Lucas County on June 30, 1982,

at 47 FR 28375, except that EPA did not act on limits for four sources. Although EPA subsequently approved limits for one of these sources (the Sun Oil facility), the federally promulgated FIP remained in effect for the other three sources.

EPA informed Ohio of its view that a federally promulgated measure does not constitute an ''approved plan'' as required under section 107(d)(3)(E)(ii). In EPA's view, this section can only be satisfied by EPA approval of rules and related plan elements that the state had submitted. The request by Ohio for EPA to approve limits for the Gulf Oil Company and Coulton Chemical facilities and to remove limits for Phillips Chemical's Philblack plant were intended to provide that all limits needed to ensure attainment in Lucas County are State adopted, EPA approved limits. Today's action to approve the limits for the Gulf Oil Company and Coulton Chemical facilities addresses this need for these two facilities. Since the Philblack plant is shut down, limits for this facility are unnecessary for the State's attainment plan. EPA thus concludes that it has now fully approved the State's attainment plan for this area, including approval of all limits needed to assure attainment in this area.

C. Is Attainment Due to Permanent and Enforceable Emission Reductions?

For most facilities in Lucas County, including most of the facilities that Ohio's modeling has demonstrated to be the key contributors to prior air quality problems, permanent and enforceable emission reductions are mandated by emission limits in Ohio's SIP. To meet these limits, some facilities switched to burning lower sulfur fuel and some facilities installed air pollution control equipment. These emission limits, adopted in Ohio Administrative Code Chapter 3745–18 and approved by EPA (as compiled at *http://www.epa.gov/region5/air/sips/sips.htm*), assure the permanence of these emission reductions.

EPA pursued additional assurances that the air quality improvement attributable to the recent emission reductions at the Marsulex facility will be permanent and enforceable. These assurances are provided in the Title V permit for Marsulex that Ohio issued on January 9, 2004, clarifying that Marsulex' Lucas County facility must meet the relevant new source performance standard, which reflects a substantially lower emission limit than the SIP limit. With this limit for the Marsulex facility and SIP limits for other facilities, EPA concludes that permanent and enforceable emission reductions have enabled Lucas County to attain the standards.

D. Does the Maintenance Plan Assure Continued Attainment?

Under section 175A of the Clean Air Act, maintenance plans must demonstrate continued attainment of the standards for 10 years after the redesignation. For SO_2, the core of most maintenance plans is the attainment plan. Since the attainment plan generally reflects dispersion modeling based on maximum allowable emissions for major SO_2 emitters, the limits on these sources' emissions adopted to attain the standards also help assure maintenance of the standards.

With the major sources thus limited to attainment level emissions, the only remaining question for maintenance is whether ''background'' sources can be expected to increase or decrease emissions. Ohio notes that background concentrations can be expected to decline. Ohio attributes this expected decline to requirements for lower sulfur contents for gasoline and diesel fuel and ongoing national sulfur dioxide emission limitations from the acid rain program. EPA concurs with Ohio's expectations. EPA thus concludes that these reductions in background concentrations in conjunction with the permanent limitations on SO_2 emissions from the major sources in Lucas County assure that the area will continue to attain the SO_2 standard.

E. Has the State Met the Requirements of Section 110 and Part D?

This criterion requires that the state has met the requirements of Clean Air Act section 110 and part D. The principal relevant requirement is for an approved attainment plan, which EPA approved on June 30, 1982 (47 FR 28375).

The discussion above of the second criterion, requiring a fully approved SIP, notes EPA's belief that that criterion is not met with federally promulgated rules, and that that criterion requires approval of a submittal that the state has adopted and submitted pursuant to section 110. Similarly for this fourth criterion, EPA believes that the criterion can be met only by the state adopting and submitting rules and other material that EPA finds to satisfy section 110 and part D. That is, EPA believes that this criterion is not satisfied if some of the rules needed to satisfy section 110 and part D were federally promulgated rather than state adopted and federally approved.

Recognizing this EPA view, Ohio submitted the limits which remained on a FIP-basis. EPA is approving these limits in today's action. As a result, Ohio now has satisfied the applicable requirements of section 110 and part D.

V. Rulemaking Action

EPA is approving limits for the Gulf Oil Company and the Marsulex facility (formerly owned by Coulton Chemical Company). EPA is redesignating Lucas County, Ohio, to attainment for SO_2. Finally, EPA is approving Ohio's maintenance plan for this area.

The approved limits for the Gulf Oil Company and Marsulex facilities supersede the corresponding FIP limits. EPA is not formally removing those FIP limits but anticipates doing so in a future rulemaking.

Clean Air Act section 107(d)(3)(E) identifies five prerequisites for redesignation of areas from nonattainment to attainment. EPA concludes that these criteria are met with respect to SO_2 in Lucas County.

EPA is publishing these actions without a prior proposal because we view these as noncontroversial actions and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the redesignation and maintenance plan if adverse comments are filed. This rule will be effective on March 18, 2004, without further notice unless we receive relevant adverse written comment by March 3, 2004. If the EPA receives adverse comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

VI. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 2, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: January 20, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart KK—Ohio

■ 2. Section 52.1881 is amended by revising paragraphs (a)(4) and (a)(8) to read as follows:

§ 52.1881 Control strategy: Sulfur Oxides (sulfur dioxide).

(a) * * *

(4) Approval—EPA approves the sulfur dioxide emission limits for the following counties: Adams County (except Dayton Power & Light-Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Butler County, Carroll County, Champaign County, Clark County, Clermont County, (except Cincinnati Gas & Electric-Beckjord), Clinton County, Columbiana County, Coshocton County, Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County, Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County, Lawrence County (except Allied Chemical-South Point), Licking County, Logan County, Lorain County, Lucas County, Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Montgomery County (except Bergstrom Paper, Miami Paper), Morgan County, Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County (except Portsmouth Gaseous Diffusion Plant), Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County,

Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical), Wayne County, Williams County, Wood County (except Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6), and Wyandot County.

* * * * *

(8) No Action—EPA is neither approving nor disapproving the emission limitations for the following counties/sources pending further review: Adams County (Dayton Power & Light-Stuart), Allen County (Cairo Chemical), Clermont County (Cincinnati Gas & Electric-Beckjord), Cuyahoga County, Franklin County, Lawrence County (Allied Chemical-South Point), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Ross County (Mead corporation), Sandusky County (Martin Marietta Chemicals), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6).

* * * * *

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.336 is amended by revising the sulfur dioxide table entry for Lucas County to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* *	*	*	*	*
Lucas County: The area east of Route 23 and west of the eastern boundary of Oregon Township.	.....	.....	.....	X
The remainder of Lucas County:				
* *	*	*	*	*

* * * * *

[FR Doc. 04–1966 Filed 1–30–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031104274–4011–02; I.D. 101603A]

RIN 0648–AQ83

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Final rule, 2004 specifications.

SUMMARY: NMFS announces final specifications for the 2004 fishing year for Atlantic mackerel, squid, and butterfish (MSB). This action also specifies an increase in the Illex squid catch limit for squid/butterfish incidental catch permit holders from 5,000 lb (2.27 mt) to 10,000 lb (4.54 mt). In addition, this action corrects the regulations implementing the MSB Fishery Management Plan (FMP) by reinserting regulatory text that was incorrectly removed in the final rule that implemented measures contained in the Atlantic Herring FMP, which was published on December 11, 2000. The intent of this final rule is to promote the development and conservation of the MSB resource.

DATES: Effective February 2, 2004.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/ Final Regulatory Flexibility Analysis (FRFA), are available from: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require NMFS to publish annual initial specifications for maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), JVP, and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. In addition, regulations implemented under Framework Adjustment 1 to the FMP allow the specification of research set-asides (RSA) to be used for research purposes.

Proposed 2004 initial specifications were published on November 14, 2003 (68 FR 64579). Public comments were accepted through December 15, 2003. The final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

2004 Final Initial Specifications

The following table contains the final initial specifications and RSA for the 2004 MSB fisheries.

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2004

Specifications	*Loligo*	*Illex*	Atlantic Mackerel	Butterfish
Max OY	26,000	24,000	N/A[1]	16,000
ABC	17,000	24,000	347,000	7,200
IOY	16,872.4[4]	24,000	170,000[2]	5,900
DAH	16,872.4	24,000	170,000[3]	5,900
DAP	16,872.4	24,000	150,000	5,900
JVP	0	0	5,000	0
TALFF	0	0	0	0
RSA	127.6	0	0	0

[1] Not applicable.
[2] IOY may be increased during the year, but the total ABC will not exceed 347,000 mt
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] Excludes 127.6 mt for RSA.

2004 Final Specifications

Atlantic Mackerel

The final rule specifies an Atlantic mackerel DAH of 170,000 mt, which includes a DAP of 150,000 mt, a JVP of 5,000 mt, and a 15,000–mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2004 Atlantic mackerel fishery, as follows: (1) JVs would be allowed south of 37°30′ N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but the total should not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JV allocation for 2004 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

Loligo Squid

This final rule specifies a *Loligo* squid IOY of 16,872.4 mt, which is equal to ABC minus the RSA, and subdivides the annual quota into four 3–month quarters, as in prior years. The 2004 quarterly allocations are as follows:

TABLE 2. *Loligo* SQUID QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons[1]	Research Set-aside
I (Jan-Mar)	33.23	5,606.7	N/A
II(Apr-Jun)	17.61	2,971.2	N/A
III(Jul-Sep)	17.3	2,918.9	N/A
IV(Oct-Dec)	31.86	5,375.6	N/A
Total	100	16,872.4	127.6

[1] Quarterly allocations after 127.6 mt RSA deduction.

Also unchanged from 2003, the 2004 directed fishery will be closed in Quarters I-III when 80 percent of the period allocation is harvested, with vessels restricted to a 2,500–lb *Loligo* squid trip limit per day until the end of the respective quarter. The annual directed fishery will close when 95 percent of the total annual DAH has been harvested, with vessels restricted to a 2,500–lb Loligo squid trip limit per day for the remainder of the year. Quota overages from Quarter I will be deducted from the allocation in Quarter III, and any overages from Quarter II will be deducted from Quarter IV. By default, quarterly underages from Quarters II and III carry over into Quarter IV, because Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent will be applied to Quarter III.

3–Year *Loligo* Specifications

As noted in the proposed rule, the regulations allow Loligo squid specifications to be established for up to 3 years, subject to annual review. The Council will evaluate the need for any changes in 2005 and 2006 during the quota setting procedure for those years. If no changes are warranted, then the 2004 quota specifications for Loligo will remain in effect in 2005 and 2006.

Illex Squid

Increase in the Illex Squid Incidental Catch Limit

This final rule specifies an increase from 5,000 lb (2.27 mt) to 10,000 lb (4.54 mt) per trip to the Illex squid catch limit for squid/butterfish incidental catch permit holders. This also represents the trip limit in effect when the directed fishery is closed.

Correction

On December 11, 2000, (65 FR 77450) NMFS published a final rule to implement management measures contained in the Atlantic Herring FMP. However, the final rule inadvertently removed § 648.6(a)(2), because the measures were thought to also pertain to Atlantic herring vessels and, therefore, were thought to be redundant with the Atlantic herring processing permit provisions specified at § 648.4(a)(10)(ii). The text previously codified at § 648.6(a)(2) allowed any Atlantic mackerel vessel that exceeded the size or horsepower restrictions specified at § 648.4(a)(5)(iii) to be issued an at-sea processor permit to receive over the side, possess, and process Atlantic mackerel harvested in or from the Exclusive Economic Zone. There were no public comments received on this provision when it was published in December, 2000. In addition, no comments were received on this provision during the proposed rule comment period to reinsert this measure. This measure does not pertain to Atlantic herring vessels and is not redundant with the provision that was established under § 648.4(a)(10)(ii). Therefore, this rule reinserts § 648.6(a)(2), which was removed on December 11, 2000.

Comments and Responses

Six commenters commented on two issues in the proposed specifications. One other comment was received on the proposed rule, although the comment did not specifically address the proposed specifications.

Comment 1: Five commenters supported the proposed zero allocation of Atlantic mackerel TALFF.

Response 1: This final rule implements the proposed zero allocation of Atlantic mackerel TALFF.

Comment 2: Six commenters opposed the proposed Atlantic mackerel JVP specification of 5,000 mt. Five commenters believe shore-based processors would be negatively affected by joint venture operations and recommended JVP be set at zero for 2004. They stated that mackerel processed by foreign vessels competes with the U.S. product in foreign markets. They also stated that the foreign vessels have a competitive advantage in those markets because they have lower operating costs than U.S. shoreside plants and are not affected by tariffs imposed by other nations on U.S. products. Thus, they favor the elimination of such ventures.

One commenter stated that the proposed specification of 5,000 mt JVP reflects the shore-based processor's efforts to thwart potential competition in the global market at the expense of the harvesting sector. The commenter noted that the allocation would not be sufficient to organize an offshore market for U.S. fishermen during 2004, and that past JVP's often provided a market for 20,000 mt of mackerel, and suggested that an allocation of 20,000 mt should be allocated to a Reserve category to be used, ''to respond to foreign proposals involving research, introduction of USA fish into non-competitive markets, technology transfer and other mutual benefits.''

Response 2: The JVP specification was reviewed and discussed by the Council during the annual specification meeting. The Council relied on testimony by industry members who indicated that there was continued activity underway to expand of domestic shore-side processing capacity for Atlantic mackerel. While domestic processing capacity is increasing, maintaining a JVP allocation of 5,000 mt presents an additional opportunity for U.S. vessels to sell Atlantic mackerel. The allocation of 5,000 mt allows JVP operations to continue at recent levels, as JVP landings in recent years have been less than 5,000 mt.

NMFS notes that there are impediments to the organization of 2004 JVP operations in addition to the level of the JVP allocation. NMFS has not received any submissions from parties interested in conducting joint venture activities. Therefore, it would not be possible to conduct a JVP during the first quarter of 2004. NMFS also notes that there is no FMP provision that would authorize the allocation of tonnage into a Reserve Category for the purposes outlined by the commenter who advocated such an allocation.

Comment 3: One commenter expressed general support for marine protected areas, objected to RSAs, and requested a reduction of commercial quotas in general.

Response 3: This rule implements measures designed to provide for improved utilization of the Federal commercial MSB quotas, and to improve efficiency of these fisheries. While NMFS acknowledges the importance of the issues raised by the commenter, this rule is not the proper mechanism to address these general issues.

Classification

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

An FRFA was completed for this action 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 discussion in this section. A copy of the IRFA is available from NMFS (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. The description of the action, a discussion of why it is being considered, and its legal basis are also contained in the preamble to the proposed rule and this final rule and those discussions are not repeated here. The items specified in 5 U.S.C. 604(a) are summarized as follows:

This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements.

Public Comments

Six comments were submitted on the proposed rule. While none of them were specific to the IRFA, several points related to the economic impacts of the measures on the fishing industry and responded to in the Comments and Responses section of this final rule. No changes were made to the final rule as a result of the comments received.

Number of Small Entities

The number of fishing vessels issued permits to fish in 2003 represent the small entities potentially affected by these measures: 381 for the *Loligo* squid/butterfish directed fishery, 72 for the *Illex* squid directed fishery, 2,407 for the Atlantic mackerel fishery, and 2,119 vessels with incidental catch permits for the squid/butterfish fishery. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive.

Minimizing Significant Economic Impacts on Small Entities

Alternatives that were considered to lessen the impacts on small entities are summarized below. Though alternatives for each species that would have set DAH at levels higher than those in this final rule were analyzed, these alternatives were not necessary to minimize significant economic impacts on small entities, and would violate provisions of the FMP that were established to prevent overfishing. Landings of these species have been lower than the DAH specified for these fisheries in recent years, therefore, the DAH specifications of 170,000 mt for Atlantic mackerel, 24,000 mt for Illex squid, 5,900 mt for butterfish, and 17,000 mt for Loligo squid represent no constraint on vessels in these fisheries, and there is no need to implement higher allocations to lessen impacts.

One alternative considered for the Atlantic mackerel fishery would have maintained the 2004 JVP specification at the same level as 2003, 10,000 mt. One comment received on the proposed specifications suggested that the 2004 JVP specification be specified at 20,000 mt. Preliminary 2003 commercial landings through June 2003, have exceeded the total landing for 2002 and are almost three times the average commercial landings for 1997–2001. Some or all of the vessel owners, crews, dealers, processors or fishing communities associated with the Atlantic mackerel fishery could be adversely affected by maintaining the 2004 specifications for Atlantic mackerel at the 2003 level or by increasing to 20,000 mt. In recent years, JVP operations have landed less than 5,000 mt, even when JVP allocations have been specified at higher levels. Therefore, these alternatives were not deemed necessary to minimize negative impacts. In addition, there was concern that it could negatively impact the potential for expansion of the shore-side processing sector of this industry.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 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. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Atlantic mackerel, squid and butterfish fishing vessel or dealer permits. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following web site: *http://www.nero.noaa.gov/*.

NMFS finds good cause under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. This action establishes annual and seasonal quotas for the managed species, which are used for the purpose of closing the fishery when the quotas are reached, and a delay would prevent the agency from implementing this action in a timely manner to establish these provisions and effectively manage these fishery. This waiver is, therefore, justified under 5 U.S.C. 553(d)(3) , because the measures are necessary in order for NMFS to carry out its function of conserving and managing these fisheries. The establishment of the Loligo squid quota, in particular, requires a waiver under this provision because the quota is allocated into quarterly periods, and fishing activity will begin on January 1, 2004. Landings data for Loligo squid in previous years indicate that landings are highly variable and largely dependent on availability. The unpredictable nature of the landings could compromise the initial quarterly quota if no closure mechanism is in place due to a delay in the effectiveness of the specification. Failure to implement timely closures could result in quota overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Timely harvest closures were required during the early part of the last three years. Furthermore, there is no requirement for vessels to modify fishing gear or come into compliance with new gear requirements thereby lessening the need for the 30–day delayed effectiveness.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 23, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, 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 § 648.4, the first sentence of paragraph (a)(5)(ii) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(ii) *Squid/butterfish incidental catch permit.* Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo* squid or butterfish, or up to 10,000 lb (4.54 mt) of *Illex* squid, as an incidental catch in another directed fishery. * * *

* * * * *

■ 3. In § 648.6, paragraph (a)(2) is added to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(2) *At-sea processors.* Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit issued under this section to receive over the side, possess and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

* * * * *

■ 4. In § 648.22, paragraph (c) is revised to read as follows:

§ 648.22 Closure of the fishery.

* * * * *

(c) Incidental catches. During the closure of the directed fishery for mackerel, the possession limit for mackerel is 10 percent by weight of the total amount of fish on board. During a period of closure of the directed fishery for *Loligo, Illex*, or butterfish, the possession limit for *Loligo* and butterfish is 2,500 lb (1.13 mt) each, and the possession limit for *Illex* is 10,000 lb (4.54 mt). Vessels may not land more than these limits during any single calendar day, which is defined as the 24–hour period beginning at 0001 hours and ending at 2400 hours.

[FR Doc. 04–1965 Filed 1–28–04; 10:26 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 21
Monday, February 2, 2004

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AH37

Revision of Fee Schedules; Fee Recovery for FY 2004

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 92 percent of its budget authority in fiscal year (FY) 2004, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2004 is approximately $545.6 million.

DATES: The comment period expires March 3, 2004. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that the NRC collect the FY 2004 fees by September 30, 2004, requests for extensions of the comment period will not be granted.

ADDRESSES: You may submit comments by any one of the following methods. Please include number RIN 3150–AH37 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

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

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

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

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

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

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

FOR FURTHER INFORMATION CONTACT: Ann Norris, telephone 301–415–7807; or Tammy Croote, telephone 301–415–6041; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action
III. Plain Language
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis

I. Background

For FYs 1991 through 2000, OBRA–90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency budgeted costs that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. As a result, the NRC is required to recover approximately 92 percent of its FY 2004 budget authority, less the amounts appropriated from the NWF, through fees. In the Energy and Water Development Appropriation Act, 2004 (Pub. L. 108–137), Congress appropriated $626.1 million to the NRC for FY 2004. This sum includes $33.1 million appropriated from the NWF. The total amount NRC is required to recover in fees for FY 2004 is approximately $545.6 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not otherwise recovered through 10 CFR Part 170 fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 92 percent of its FY 2004 budget authority less the appropriations received from the NWF. The NRC's total budget authority for FY 2004 is $626.1 million, of which approximately $33.1 million has been appropriated from the NWF. Based on the 92 percent fee recovery requirement, the NRC must recover approximately $545.6 million in FY 2004 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2004 is $19.3 million more than the amount estimated for recovery in FY 2003.

The FY 2004 fee recovery amount is reduced by a $3.5 million carryover from additional collections in FY 2003 that were unanticipated at the time the final FY 2003 fee rule was published. This leaves approximately $542.1 million to be recovered in FY 2004 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately $139.7 million will be recovered in FY 2004 from part 170 fees and other offsetting receipts. For FY 2004, the NRC also estimates a net adjustment of approximately $2.0 million for FY 2004 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2004 for FY 2003 invoices. The remaining $400.4 million would be recovered through the part 171 annual fees, compared to $396.8 million for FY 2003.

The primary reason for the increase in total fees for FY 2004 is that the amount to be recovered for FY 2004 includes $51.1 million for homeland security activities, compared to $35.4 million in FY 2003. Other reasons for the fee increases include the 2004 Federal pay raise and the increased resources for reactor license renewals and new reactor licensing.

Table I summarizes the budget and fee recovery amounts for FY 2004. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2004

[Dollars in millions]

Total Budget Authority	$626.1
Less NWF	−33.1
Balance	$593.0
Fee Recovery Rate for FY 2004	×92.0%
Total Amount to be Recovered For FY 2004	$545.6
Less Carryover from FY 2003	−3.5
Amount to be Recovered Through Fees and Other Receipts	$542.1
Less Estimated Part 170 Fees and Other Receipts	−139.7
Part 171 Fee Collections Required	$402.4
Part 171 Billing Adjustments:	
Unpaid FY 2004 Invoices (estimated)	2.7
Less Payments Received in FY 2004 for Prior Year Invoices (estimated)	−4.7
Subtotal	−2.0
Adjusted Part 171 Collections Required	$400.4

The FY 2004 final fee rule will be a ''major rule'' as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fee schedules for FY 2004 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2004 final rule. For these licensees, payment would be due on the effective date of the FY 2004 rule. Those materials licensees whose license anniversary date during FY 2004 falls before the effective date of the final FY 2004 rule would be billed for the annual fee during the anniversary month of the license at the FY 2003 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2004 rule would be billed for the annual fee at the FY 2004 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rule to all licensees, although, as a cost saving measure, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final fee rule to all licensees. Accordingly, the NRC does not plan to routinely mail the FY 2004 final fee rule or future final fee rules to licensees.

However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee Team, Division of Financial Management, Office of the Chief Financial Officer, at 301–415–7554, or e-mail *fees@nrc.gov.* The NRC plans to publish the final fee rule in May 2004. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

The NRC is proposing to make changes to 10 CFR Parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The NRC is proposing to establish the hourly rates used to calculate fees and to adjust the part 170 fees based on the proposed hourly rates.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to establish in § 170.20 two professional hourly rates for NRC staff time. These proposed rates would be based on the number of FY 2004 direct program full time equivalents (FTEs) and the FY 2004 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF. These rates are used to determine the part 170 fees. The proposed rate for the reactor program is $157 per hour ($278,957 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.21 of the fee regulations. The proposed rate for the materials program (nuclear materials and nuclear waste programs) is $156 per hour ($276,598 per direct FTE). This rate would be applicable to all activities for which fees are assessed under § 170.31 of the fee regulations. In the FY 2003 final fee rule, the reactor and materials program rates were $156 and $158, respectively.

The primary reason for the increase to the reactor rate is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase for the materials program, the increase is offset by a reduction in overhead costs and allocated agency management and support costs under this program.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs). All program costs, except contract support, are included in the hourly rate for each program by allocating them uniformly by the total number of direct FTEs for the program. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are recovered through part 170 fees.

b. All non-program direct costs for management and support and the Office of the Inspector General, are allocated to each program based on that program's costs.

This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2004 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits.	$145.6M	$35.4M
Overhead Salaries & Benefits, Program Travel and Other Support.	69.9M	16.7M
Allocated Agency Management and Support.	120.3M	29.1M
Subtotal	$335.8M	$81.1M
Less Offsetting Receipts.	−0.1M	−0.00M
Total Budget Included in Hourly Rate.	$335.7M	$81.1M
Program Direct FTEs ..	1203.4	293.4
Rate per Direct FTE	$278,957	$276,598
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours).	$157	$156

As shown in Table II, dividing the $335.7 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1203.4) results in a rate for the reactor program of $278,957 per FTE for FY 2004. The Direct FTE Hourly Rate for the reactor program would be $157 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($278,957) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, ''Performance of Commercial Activities.'' Similarly, dividing the $81.1 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (293.4) results in a rate of $276,598 per FTE for FY 2004. The Direct FTE Hourly Rate for the materials program would be $156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($276,598) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is proposing to adjust the current part 170 fees in §§ 170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§ 170.21 and 170.31 would be based on the proposed professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule would be assessed at the FY 2004 hourly rates.

The fees in §§ 170.21 and 170.31 that are based on the average time to review an application (''flat'' fees) would be adjusted to reflect the change in the materials program professional hourly rate from FY 2003. The amounts of the materials licensing ''flat'' fees were rounded so that the amounts would be ''*de minimis*'' and the resulting flat fee would be convenient to the user. Fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing ''flat'' fees are applicable for fee categories K.1 through K.5 of § 170.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of § 170.31. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

The NRC is also proposing to expand category 10 of § 170.31 to include category 10.C for evaluation of security plans, route approvals and surveys, and transportation security devices, including immobilization devices. There has been an increase in the number of transportation security activities that the NRC oversees and an increase in the number and types of licensees covered by the transportation security requirements. Therefore, the NRC believes that category 10 should be updated to clarify that licensees will be assessed full-cost fees for security-related activities as stated above.

Additionally, the NRC is proposing to modify § 170.21 category K. and § 170.31 category 15 to clarify the import and export license language. This clarification is being proposed to reflect the current work being performed under these categories and to ensure consistency with 10 CFR Part 110.

3. Administrative Amendments

The NRC is proposing to modify category 13 of § 170.31, to include licensing and inspection fees under category 13.A and delete category 13.C. This change would be made so that § 170.31 corresponds with the categorization used in § 171.16(d).

Additionally, the NRC is proposing to modify § 170.12(f) to replace License Fee and Accounts Receivable Branch with Accounts Receivable Team. This change is being made so that the regulation reflects the current Office of the Chief Financial Officer organizational structure.

In summary, the NRC is proposing to amend 10 CFR Part 170 to—

1. Establish revised materials and reactor programs FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates;
3. Revise § 170.31 to add category 10.C to clarify transportation security activities;
4. Modify § 170.21 category K. and § 170.31 category 15 to ensure consistency with 10 CFR Part 110;
5. Make an administrative change to fee category 13 of § 170.31 to be consistent with category 13 of § 171.16(d).
6. Revise § 170.12(f) to replace License Fee and Accounts Receivable Branch with Accounts Receivable Team.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC proposes to revise the annual fees for FY 2004 as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2004. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), determined that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2003. Based on the substantial change in the total budget from FY 2003 to FY 2004 and the magnitude of the budget allocated to certain classes of licensees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in increased annual fees compared to FY 2003 for three classes of licenses (power reactors, rare earth mills, and transportation), and decreased annual fees for three classes (spent fuel storage/reactor decommissioning, non-power reactors, and fuel facilities). For the uranium recovery and small materials classes, some of the categories (sub-classes) of licenses would have decreased annual fees and others would have increased annual fees.

The annual fees in §§ 171.15 and 171.16 would be revised for FY 2004 to recover approximately 92 percent of the NRC's FY 2004 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF. The total amount to be recovered through annual fees for FY 2004 is $400.4 million, compared to $396.8 million for FY 2003.

Within the nine fee classes of licensees, the FY 2004 annual fees will decrease for many categories of licenses, increase for other categories, and for seven categories remain the same from the previous year. Of the seven categories that remain the same, two of the categories comprise the largest number of materials licensees (3P and 7C). The increases in annual fees range from approximately .9 percent for the category of other source material licenses to approximately 108 percent for the uranium recovery disposal incidental to operations category. The proposed decreases in annual fees range from approximately .4 percent for the category of commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material (*i.e.*, nuclear laundry category) to approximately 77 percent for conventional mills category.

Factors affecting the changes to the annual fee amounts include: adjustments in budgeted costs for the different classes of licenses; the reduction in the fee recovery rate from 94 percent for FY 2003 to 92 percent for FY 2004; the estimated part 170 collections for the various classes of licenses; the decrease in the number of licensees for certain categories of licenses; and the $3.5 million carryover from additional collections in FY 2003 that were unanticipated at the time the final FY 2003 final rule was published (*i.e.*, there was no carryover from FY 2002 to reduce the FY 2003 fees).

Table III below shows the proposed rebaselined annual fees for FY 2004 for a representative list of categories of licenses.

TABLE III.—REBASELINED ANNUAL FEES FOR FY 2004

Class/category of licenses	FY 2004 annual fee
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	$3,342,000
Spent Fuel Storage/Reactor Decommissioning	207,000
Nonpower Reactors	62,600
High Enriched Uranium Fuel Facility	5,342,000
Low Enriched Uranium Fuel Facility	1,791,000
UF_6 Conversion Facility	768,000
Conventional Mills	14,600
Transportation:	
Users/Fabricators	91,400
Users Only	7,400
Typical Materials Users:	
Radiographers	12,000
Well Loggers	4,700
Gauge Users	1,900
Broad Scope Medical	25,100

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA–90, as amended. Based on the FY 2001 Energy and Water Development Appropriations Act which amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005, the total surcharge costs for FY 2004 will be reduced by approximately $47.4 million. The total FY 2004 budgeted costs for these activities and the

reduction to the total surcharge amount for fee recovery purposes are shown in Table IV. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE IV.—SURCHARGE COSTS

[Dollars in millions]

Category of costs	FY 2004 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$10.8
b. Agreement State oversight	10.5
c. Low-level waste (LLW) disposal generic activities	3.8
d. Site decommissioning management plan activities not recovered under part 170	3.4
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	7.2
b. Licensing and inspection activities associated with other Federal agencies	2.5
c. Costs not recovered from small entities under 10 CFR 171.16(c)	4.8
3. Activities supporting NRC operating licensees and others:	
a. Regulatory support to Agreement States	19.4
b. Generic decommissioning/reclamation (except those related to power reactors)	6.3
Total surcharge costs	68.6
Less 8 percent of NRC's FY 2004 total budget (less NWF)	−47.4
Total Surcharge Costs to be Recovered	$21.2

As shown in Table IV, $21.2 million would be the total surcharge cost allocated to the various classes of licenses for FY 2004. The NRC would continue to allocate the surcharge costs, except LLW surcharge costs, to each class of licenses based on the percent of the budget for that fee class compared to the NRC's total budget. The NRC would continue to allocate the LLW surcharge costs based on the volume of LLW disposal of certain classes of licenses. The proposed surcharge costs allocated to each class would be included in the annual fee assessed to each licensee. The proposed FY 2004 surcharge costs allocated to each class of licenses are shown in Table V. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE V.—ALLOCATION OF SURCHARGE

	LLW surcharge		Non-LLW surcharge		Total surcharge
	Percent	$M	Percent	$M	$M
Operating Power Reactors	74	2.8	82.8	14.4	17.2
Spent Fuel Storage/Reactor Decomm	.....	.....	5.4	0.9	0.9
Nonpower Reactors	.....	.....	0.1	0.0	0.0
Fuel Facilities	8	0.3	6.8	1.2	1.5
Materials Users	18	0.7	3.2	0.6	1.2
Transportation	.....	.....	1.2	0.2	0.2
Rare Earth Facilities	.....	.....	0.1	0.0	0.0
Uranium Recovery	.....	.....	0.4	0.1	0.1
Total Surcharge	100	3.8	100.0	17.4	21.2

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in a. through h. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Electronic Reading Room on the Internet at Web site address *http://www.nrc.gov/reading-rm/adams.html.* During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

a. *Fuel Facilities.* The FY 2004 budgeted costs to be recovered in annual fees assessment to the fuel facility class of licenses is approximately $24.7 million compared to $27.0 million in FY 2003. The annual fee decrease is attributable to the increase in part 170 fees for the fuel facility class due to an increase in the mixed-oxide fuel effort. The annual fees are allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is included in the NRC workpapers that are publicly available), licensees are grouped into five categories according to their licensed activities (*i.e.*, nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be

applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (*e.g.*, decommissioning or license termination) that results in it not being subject to part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/ certificate holders, resulting in higher fees for those affected licensees.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/ certificate holder may elect not to fully use a license/certificate, the license/ certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities, and the relative generic regulatory programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety and safeguards risk significance associated with the nuclear material and use/activity, and the commensurate generic regulatory program (*i.e.*, scope, depth and rigor) level of effort.

The effort factors for the various subclasses of fuel facility licenses are summarized in Table VI.

TABLE VI.—EFFORT FACTORS FOR FUEL FACILITIES

Facility type	Number of facilities	Effort factors (in percent)	
		Safety	Safeguards
High Enriched Uranium Fuel	2	91 (36.0)	76 (57.1)
Enrichment	2	70 (27.7)	34 (25.6)
Low Enriched Uranium Fuel	3	66 (26.1)	18 (13.5)
UF_6 Conversion	1	12 (4.7)	0 (0)
Limited Operations Facility	1	8 (3.2)	3 (2.3)
Others	1	6 (2.4)	2 (1.5)

Applying these factors to the safety, safeguards, and surcharge components of the $24.9 million total annual fee amount for the fuel facility class results in annual fees for each licensee within the categories of this class summarized in Table VII.

TABLE VII.—ANNUAL FEES FOR FUEL FACILITIES

Facility type	FY 2004 annual fee
High Enriched Uranium Fuel	$5,342,000
Uranium Enrichment	3,327,000
Low Enriched Uranium	1,791,000
UF_6 Conversion	768,000
Limited Operations Facility	704,000
Others	512,000

b. *Uranium Recovery Facilities.* The proposed FY 2004 budgeted costs, including surcharge costs, to be recovered through annual fees assessed to the uranium recovery class is approximately $547,000. Approximately $453,000 of this amount would be assessed to DOE. The remaining $94,000 would be recovered through annual fees assessed to conventional mills, in-situ leach solution mining facilities, and 11e.(2) mill tailings disposal facilities.

Consistent with the change in methodology adopted in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated equally between Title I and Title II licensees. This would result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge and generic/other costs, for the uranium recovery class. The remaining 50 percent of the surcharge and generic/other costs are assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):	
UMTRCA Title I budgeted costs	$359,578
50 percent of generic/other uranium recovery budgeted costs	55,589
50 percent of uranium recovery surcharge	38,197
Total Annual Fee Amount for DOE	453,364
Annual Fee Amount for UMTRCA Title II Specific Licenses:	
50 percent of generic/other uranium recovery budgeted costs	55,589
50 percent of uranium recovery surcharge	38,197
Total Annual Fee Amount for Title II Specific Licenses	93,786

The matrix used to allocate the costs of various categories of Title II specific licensees has been updated to reflect NRC's increased efforts related to facility closure compared to facility operations and revises the weighting factors to reflect the effort levels per category. However, consistent with the methodology established in the FY 1995 fee rule (60 FR 32218; June 20, 1995), the approach for establishing part 171 annual fees for Title II uranium recovery licensees has not changed, and is as follows:

(1) The methodology identifies three categories of licenses: conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), and mill tailings disposal facilities (11e.(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (*e.g.*, rulemakings, staff guidance documents);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

(4) Each of the major program elements was further divided into three subelements;

(5) The three major subelements of generic activities associated with uranium facility operations are regulatory efforts related to the operation of mills, handling and disposal of waste, and prevention of groundwater contamination. The three major subelements of generic activities associated with uranium facility closure are regulatory efforts related to decommissioning of facilities and land clean-up, reclamation and closure of tailings impoundments, and groundwater clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various categories of specifically licensed Title II uranium recovery licensees are as follows:

TABLE VIII.—WEIGHTED FACTORS FOR URANIUM RECOVERY LICENSES

Facility type	Number of facilities	Category weight	Level of benefit total weight	
			Value	Percent
Class I (conventional mills)	2	900	1,800	31
Class II (solution mining)	3	800	2,400	41
11e.(2) disposal	1	795	795	14
11e.(2) disposal incident to existing tailings sites	1	800	800	14

Applying these factors to the approximately $94,000 in budgeted costs to be recovered from Title II specific licensees results in the following revised annual fees:

TABLE IX.—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

Facility type	FY 2004 annual fee
Class I (conventional mills)	$14,600
Class II (solution mining)	12,900
11e.(2) disposal	12,900
11e.(2) disposal incidental to existing tailings sites	12,900

In the FY 2001 final rule (66 FR 32478; June 14, 2001), the NRC revised § 171.19 to establish a quarterly billing schedule for Class I and Class II licensees, regardless of the annual fee amount. Therefore, as provided in § 171.19(b), if the amounts collected in the first three quarters of FY 2004 exceed the amount of the revised annual fee, the overpayment will be refunded; if the amounts collected in the first three quarters are less than the final revised annual fee, the remainder will be billed after the FY 2004 final fee rule is published. The remaining categories of Title II facilities are subject to billing based on the anniversary date of the license as provided in § 171.19(c).

c. *Power Reactors.* The approximately $326.0 million in budgeted costs to be recovered through FY 2004 annual fees

assessed to the power reactor class, including budgeted costs for homeland security activities related to power reactors, is divided equally among the 104 power reactors licensed to operate. This results in a FY 2004 annual fee of $3,135,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2004 spent fuel storage/reactor decommissioning annual fee of $207,000. This results in a total FY 2004 annual fee of $3,342,000 for each power reactor licensed to operate.

d. *Spent Fuel Storage/Reactor Decommissioning.* For FY 2004, budgeted costs of approximately $25.0 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The costs are divided equally among the 121 licensees, resulting in a FY 2004 annual fee of $207,000 per licensee.

e. *Non-power Reactors.* Approximately $250,000 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2004. This amount is divided equally among the four non-power reactors subject to annual fees. This results in a FY 2004 annual fee of $62,600 for each licensee.

f. *Rare Earth Facilities.* The FY 2004 budgeted costs of $187,900 for rare earth facilities to be recovered through annual fees will be assessed to the one licensee who has a specific license for receipt and processing of source material. Before FY 2004, one rare earth facility requested that its license be amended to authorize decommissioning activities only. Consequently, this license is no longer subject to annual fees. The result is a FY 2004 annual fee of $187,900 for the one remaining licensee.

g. *Materials Users.* To equitably and fairly allocate the $21.7 million in FY 2004 budgeted costs to be recovered in annual fees assessed to the approximately 4,500 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)]+ Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $16.3 million in general costs and is 1.16 for FY 2004. The inspection multiplier is the multiple necessary to recover approximately $4.1 million in inspection costs for FY 2004, and is 0.98 for FY 2004. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2004, approximately $83,000 in budgeted costs for the implementation of revised part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human use licenses.

The annual fee assessed to each licensee also includes a share of the $554,800 in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately $676,800 in LLW surcharge costs allocated to the class. The annual fee for each fee category is shown in § 171.16(d).

h. *Transportation.* Of the approximately $5.5 million in FY 2004 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately $1.5 million will be recovered from annual fees assessed to DOE based on the number of part 71 Certificates of Compliance that it holds. Of the remaining $4.0 million, approximately 21 percent is allocated to the 75 quality assurance plans authorizing use only and the 37 quality assurance plans authorizing use and design/fabrication. The remaining 79 percent is allocated only to the 37 quality assurance plans authorizing use and design/fabrication. This results in an annual fee of $7,400 for each of the holders of quality assurance plans that authorize use only, and an annual fee of $91,400 for each of the holders of quality assurance plans that authorize use and design/fabrication.

2. Agreement State Activities

On July 23, 2003, the NRC approved an Agreement with the State of Wisconsin under Section 274 of the Atomic Energy Act (AEA) of 1954, as amended. This Agreement transferred to the State the Commission's regulatory authority over byproduct material, source material and special nuclear material in quantities not sufficient to form a critical mass. This Agreement became effective August 10, 2003. Currently, there are 33 Agreement States.

As a result of this Agreement, 222 former NRC licensees are now Wisconsin licensees. Thirty additional licenses were partially transferred to Wisconsin because the NRC retained jurisdiction over certain activities of those licensees. Because NRC does not charge fees to Agreement States or their licensees, the NRC will not collect fees in FY 2004 or thereafter for the 222 former NRC licensees, and will collect fees from the 30 partially transferred licensees only for those activities over which the NRC retains jurisdiction. The costs of Agreement State regulatory support and oversight activities for Wisconsin, as for any other Agreement State, would be recovered through the surcharge, consistent with existing fee policy.

On January 2, 2003, the State of Utah requested an amended Agreement between the NRC and itself per Section 274b of the AEA. This amendment would transfer regulatory responsibility for uranium mills and tailings to the State. Utah previously had become an Agreement State for certain other categories of materials, effective April 1, 1984. The request for this amendment is currently under review by the Commission and a decision on this matter is expected by the end of March 2004. If the Commission approves this Agreement, four licensees would be transferred from NRC to Utah. Two of these licensees are uranium mills that are in reclamation, and therefore, currently do not pay part 171 annual fees. However, the other two licensees do pay NRC annual fees; if these licensees are removed from the uranium recovery class of licensees, the annual fees for the remaining NRC licensees in that class would likely increase in the final FY 2004 fee rule.

3. Master Materials Licenses

On March 17, 2003, the NRC issued a master material license to the U.S. Department of Veterans Affairs (VA) to take over principal regulatory functions for its medical facilities throughout the United States. Including the VA, there are now three master materials licenses.

The VA will conduct its own inspections to ensure compliance with NRC regulations and with the terms of the VA-issued permits. It will also take enforcement action if violations of requirements are identified. The NRC

retains the authority to take enforcement action, if appropriate. The NRC will continue to conduct evaluations of the VA's performance and conduct independent inspections of a sample of VA medical facilities.

As a result of the issuance of the master materials license to the VA, 116 medical facilities that were previously licensed by the NRC for various uses of radioactive materials for the diagnosis and treatment of diseases are now included in the master materials license. Thus, the number of licenses in the master materials category has increased from two to three, while the number of licensees for certain other categories has decreased.

4. Administrative Amendment

The NRC is proposing to modify Category 10 of § 171.16(d) to add category 10.C for the evaluation of security plans, route approvals, route surveys, and transportation security devices, including immobilization devices. This is an administrative change that would be made only to ensure consistency with fee category 10.C of § 170.31 as described above. The NRC is not proposing an annual fee for category 10.C.

Additionally, the NRC is proposing to modify § 171.19(a) to replace On-Line Payment and Collection System (OPAC's) with Intragovernmental Payment and Collection System (IPAC). This change is being made so that the regulation reflects the current payment process.

In summary, the NRC is proposing to—

1. Establish rebaselined annual fees for FY 2004;

2. Adjust the annual fees to reflect the changes in agreement state activities and the master materials licenses;

3. Make an administrative change to add fee category 10.C to § 171.16(d) to ensure consistency with the proposed addition of category 10.C to § 170.31.

4. Revise § 171.19(a) to replace On-Line Payment and Collection System (OPAC's) with Intragovernmental Payment and Collection System (IPAC).

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using these standards is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC would amend the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 92 percent of its budget authority in FY 2004 as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The NRC's fee recovery amount for FY 2004 is 92 percent. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the amount of the FY 2004 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and

devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 92 percent of the Commission's FY 2004 budget of $626.1 million less the amounts collected from part 170 fees and funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 92 percent of its FY 2004 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2004. The proposed rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2004.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

2. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

(a) Reactor Program (§ 170.21 Activities): $157 per hour

(b) Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities): $156 per hour

3. In § 170.21, Category K in the table is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1,2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.	
1. Application for import or export of production and utilization facilities [3] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application-new license	$10,100
Amendment	$10,100

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees [1,2]
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8)..	
Application-new license	$5,900
Amendment	$5,900
3. Application for export of components requiring only the assistance of the Executive Branch to obtain foreign government assurances.	
Application-new license	$1,900
Amendment	$1,900
4. Application for export of facility components and equipment (examples provided in 10 CFR 110, Appendix A, Items (5) through (9)) not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application-new license	$1,200
Amendment	$1,200
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	
Amendment	$230

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Imports only of major components for end-use at NRC-licensed reactors are now authorized under NRC general import license.

* * * * *

4. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application	$720.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application	$1,400.
E. Licenses or certificates for construction and operation of a uranium enrichment facility:	
Licensing and inspection	Full Cost.
2. Source material:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, and ion exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2A(1):	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(1):	
Licensing and inspection	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$170.
C. All other source material licenses:	
Application	$6,100.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$7,300.
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,800.
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3D.	
Application	$6,000.
D. Licenses and approvals issued under §§ 32.72 and and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application	$2,600.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,800.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$3,600.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application	$8,700.
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$4,200.
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application	$4,300.
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	1,100.
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application	$640.
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$6,100.
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
Application	$3,000.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$3,300.
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations:	
Application	$3,200.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,200.
Q. Registration of a device(s) generally licensed under part 31 of this chapter:	
Registration	$610.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,900.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,800.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$2,000.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$12,400.
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,800.
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,900.
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$1,900.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$360.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,600.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$5,600.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,800.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$590.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspection	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2,3]
Application	$2,100.
Inspections	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices):	
Licensing and inspection	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects:	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
Inspections	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite.	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b). This category includes application for export and import of radioactive waste.	
Application—new license	$10,100.
Amendment	$10,100.
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes application for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities, Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.	
Application—new license	$5,900.
Amendment	$5,900.
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring only the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license	$1,900.
Amendment	$1,900.
D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—New license	$1,200.
Amendment	$1,200.
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Amendment	$230.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,500.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

5. The authority citation for part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

6. In § 171.15 paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2004 annual fee for each operating power reactor which must be collected by September 30, 2004, is $3,342,000.

(2) The FY 2004 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2004 spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2004 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2004 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors (*e.g.*, updating part 50 of this chapter, or operating the Incident Response Center). The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2004 annual fee for each power reactor holding a part 50 license that is in a decommissioning or possession only status and has spent fuel onsite and each independent spent fuel storage part 72 licensee who does not hold a part 50 license is $207,000.

(2) The FY 2004 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2004 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2004 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 2004 surcharge are as follows:

(i) Low-level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (*e.g.*, international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy (*e.g.*, reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

(2) The total FY 2004 surcharge allocated to the operating power reactor class of licenses is $17.2 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2004 operating power reactor surcharge to be assessed to each operating power reactor is approximately $165,200. This amount is calculated by dividing the total operating power reactor surcharge ($17.2 million) by the number of operating power reactors (104).

(3) The FY 2004 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is $.9 million. The FY 2004 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage part 72 licensee who does not hold a part 50 license is approximately $7,800. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and part 72 licensees who do not hold a part 50 license.

(e) The FY 2004 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under part 50 of this chapter,

unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor—$62,600.

Test reactor—$62,600.

7. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts)	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less	
35 to 500 employees	2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (*See* 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's Web site at *http://www.nrc.gov.* For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov.*

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2004 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2004 surcharge are shown for convenience in paragraph (e) of this section. The FY 2004 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1,2,3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
BWX Technologies SNM–42	$5,342,000
Nuclear Fuel Services SNM–124	5,342,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Global Nuclear Fuel SNM–1097	1,791,000
Framatome ANP Richland SNM–1227	1,791,000
Westinghouse Electric Company SNM–1107	1,791,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
Framatome ANP SNM–1168	704,000
(b) All Others:	
General Electric SNM–960	512,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI)	[11] NA
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,900
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	4,800

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1,2,3]
E. Licenses or certificates for the operation of a uranium enrichment facility	3,327,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	768,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	14,600
Class II facilities [4]	12,900
Other facilities [4]	187,900
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2A(2) or Category 2A(4)	12,900
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2A(2)	12,900
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	710
C. All other source material licenses	11,500
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	22,100
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	6,800
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee under Category 3D	11,100
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license	4,500
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,500
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	6,500
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	23,800
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,800
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,100
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	2,200
K. Licenses issued under Subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	1,300
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	12,000
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution	5,900
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	6,400

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1,2,3]
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license	12,000
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,500
Q. Registration of devices generally licensed pursuant to part 31 of this chapter	[13] N/A
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	10,600
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,700
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	4,700
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	23,000
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,800
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. [9]	25,100
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. [9]	4,600
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,400
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,700
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	6,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	2,200
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	710
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
Users and Fabricators	91,400
Users	7,400
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	248,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,526,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1,2,3]
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	453,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2003, and permanently ceased licensed activities entirely by September 30, 2003. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.*, human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An ''other'' license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] *See* § 171.15(c).

[12] *See* § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR Part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses (*e.g.*, international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities); and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy (*e.g.,* reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.).

Dated at Rockville, Maryland, this 26th day of January, 2004.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This Appendix Will Not Appear in the Code of Federal Regulations.

Appendix A To This Proposed Rule—Draft Regulatory Flexibility Analysis For the Amendments to 10 CFR Part 170 (License Fees) And 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601 *et seq.*), requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were established based on the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this proposed rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA–90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. The amount to be recovered for FY 2004 is approximately $545.6 million.

OBRA–90 requires that the schedule of charges established by rulemaking should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licenses and established

rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue to adjust the annual fees by the percent change method established in FY 1995, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licenses, in which case the annual fee base would be reestablished.

Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline its part 171 annual fees again in FY 2004. Rebaselining fees will result in decreased annual fees for a majority of the categories of licenses (including many materials licensees) and increased annual fees for other categories.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a ''major'' rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis (RFA) and the small entity compliance guide (Attachment 1) have been prepared for the FY 2004 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 27 percent of these licensees (approximately 1,300 licensees for FY 2003) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies (''Mom and Pop'' operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soil testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Approximately 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA, in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (*e.g.*, number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (*e.g.*, volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States (Washington, Texas, Illinois, Nebraska, New York, and Utah), were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991, as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the

maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

The NRC examined the small entity fees again in FY 2001 (66 FR 32452; June 14, 2001), and determined that a change was not warranted to the small entity fees established in FY 2000. The NRC stated in the Regulatory Flexibility Analysis for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act.

Accordingly, the NRC re-examined the small entity fees for FY 2003, and did not believe that a change to the small entity fees was warranted. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees and the relative low inflation rates, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is retaining the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2004. The NRC plans to re-examine the small entity fees again in FY 2005.

IV. Summary

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 92 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. Based on its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2004.

Attachment 1 to Appendix A: U. S. Nuclear Regulatory Commission Small Entity Compliance Guide Fiscal Year 2004

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Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each ''major'' final rule, as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a ''major'' rule under SBREFA. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2004 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2004 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of annual fees for those materials licensees who qualify as small entities under the NRC's size standards.

Licensees who meet the NRC's size standards for a small entity must submit a completed NRC Form 526 ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171'' to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at *http://www.nrc.gov.* The form can then be accessed by selecting ''License Fees'' and under ''Forms'' selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov.* The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team, at the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

For purposes of compliance with its regulations (10 CFR 2.810), the NRC has defined a small entity as follows:

(1) *Small business*—a for-profit concern that provides a service, or a concern that is not engaged in manufacturing, with average gross receipts of $5 million or less over its last 3 completed fiscal years;

(2) *Manufacturing industry*—a manufacturing concern with an average of 500 or fewer employees during each pay period for the preceding 12 calendar months;

(3) *Small organizations*—a not-for-profit organization that is independently owned and operated and has annual gross receipts of $5 million or less;

(4) *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district, with a population of less than 50,000;

(5) *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not State or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, the following guidelines are provided, which are based on the Small Business Administration's regulations (13 CFR Part 121).

(1) A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

(2) The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (*i.e.*, not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

(3) Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (*i.e.*, not solely receipts from NRC licensed activities).

(4) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of fees for licensees that qualify as small entity under the NRC's size standards. The fees are as follows:

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

	Maximum annual fee per licensed category
Small business not engaged in manufacturing and small not-for-profit organizations (Gross Annual Receipts)	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (population)	
20,000 to 50,000	2,300
Less than 20,000	500
Educational institutions that are not State or publicly supported, and have 500 Employees or less	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526. Licensees can access this form on the NRC's Web site at *http://www.nrc.gov.* The form can then be accessed by selecting ''License Fees'' and under ''Forms'' selecting NRC Form 526. Those licensees that qualify as a ''small entity'' under the NRC size standards at 10 CFR Part 2.810 can complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301–415–7544, or by e-mailing us at *fees@nrc.gov.*

Instructions for Completing NRC Small Entity Form 526

(1) File a separate NRC Form 526 for each annual fee invoice received.

(2) Complete all items on NRC Form 526, as follows:

a. Enter the license number and invoice number exactly as they appear on the annual fee invoice.

b. Enter the Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) if known.

c. Enter the licensee's name and address as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a license must be submitted to the respective licensing staff in the NRC's regional or headquarters offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

(i) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(ii) The size standards apply to the licensee, including all parent companies and affiliates—not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material.

(iii) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources—not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority (if included in gross or total income), proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider.

(iv) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some licensees qualify for reduced fees as small entities. Licensees who qualify as small entities and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which is either $2,300 or $500 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 months of the fiscal year, and licensees who file for termination or for a ''possession only'' license and permanently cease licensed activities during the first 6 months of the fiscal year, pay only 50 percent of the annual fee for that year. Such invoices state that the ''amount billed represents 50% proration.'' This means that the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1,150 or $250 for each fee category billed (instead of the full small entity annual fee of $2,300 or $500).

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and licensees must complete and return form 526 for the fee to be reduced to the small entity fee amount. *Licensees will not receive a new invoice for the reduced amount.* The completed NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy'' of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee Team at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov,* or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et. seq.* NRC's implementing regulations are found at 10 CFR Part 13.

[FR Doc. 04–2019 Filed 1–30–04; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703 and 704

Investment in Exchangeable Collateralized Mortgage Obligations

AGENCY: National Credit Union Administration.

ACTION: Proposed rule with request for comments.

SUMMARY: The National Credit Union Administration (NCUA) proposes to amend its regulations regarding investment in collateralized mortgage obligations (CMOs). Currently, NCUA regulations prohibit federal credit unions (FCUs) and certain corporate credit unions from investing in stripped mortgage backed securities (SMBS) and exchangeable CMOs that represent interests in one or more SMBS. NCUA has safety and soundness concerns with direct investment in SMBS, but recognizes that some exchangeable CMOs representing interests in one or more SMBS may be safe investments for credit unions. This proposed rule will

authorize all FCUs and corporate credit unions to invest in exchangeable CMOs representing interests in one or more SMBS subject to certain safety and soundness limitations. This proposed rule also contains miscellaneous technical corrections and clarifying amendments to NCUA's Investment and Deposit Activities rule and Corporate Credit Unions rule.

DATES: Comments must be received on or before April 2, 2004.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319, or e-mail comments to *regcomments@NCUA.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Steve Sherrod, Senior Investment Officer, Office of Strategic Program Support and Planning (OSPSP) at the above address or telephone (703) 518–6620; Kim Iverson, Senior Investment Officer, Office of Strategic Program Support and Planning, at the above address or telephone (703) 518–6620; George Curtis, Corporate Program Specialist, Office of Corporate Credit Unions at the above address or telephone (703) 518–6640; or Paul Peterson, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6555.

SUPPLEMENTARY INFORMATION:

A. Exchangeable Collateralized Mortgage Obligations

The Federal Credit Union Act permits FCUs and corporate credit unions to purchase mortgage related securities (MRS) subject to such regulations as the NCUA Board may prescribe. 12 U.S.C. 1757(15)(B). NCUA regulations generally permit the purchase of CMOs, a multi-class MRS, but not if the CMO is a stripped mortgage backed security (SMBS). 12 CFR 703.14(d) and 703.16(e); 704.5(c)(5) and (h)(4). SMBS, including interest-only CMOs (IOs) and principal-only CMOs (POs) are, when purchased individually, highly volatile and risky investments. For example, in a declining interest rate environment, such as that experienced over the last few years, the value of an IO can drop precipitously in a short time period. Accordingly, individual SMBS are generally not suitable investments for most credit unions.

Currently, many CMO issues contain one or more classes of exchangeable CMOs. An exchangeable CMO represents a beneficial ownership interest in a combination of two or more underlying CMOs, and the owner may pay a fee and take delivery of the underlying CMOs. In many cases, these underlying CMOs include IOs and POs.

Because NCUA regulations prohibit investment in SMBS, the regulations also prohibit investment in an exchangeable CMO that represents an interest in one or more IOs or POs. Certain exchangeable CMOs representing IOs or POs, however, do not carry the risk or raise the same safety and soundness concerns associated with direct investment in an SMBS. For example, an exchangeable CMO might represent ownership in two securities: (1) An interest-bearing CMO (*i.e.*, a non-SMBS CMO) with a coupon of 5.0 percent and (2) a SMBS in the form of an IO representing 0.5 percent interest on the interest-bearing CMO. *See* RCR class PA from Federal National Mortgage Association (Fannie Mae) Prospectus Supplement 2001–73. As indicated in the Prospectus Supplement for this particular combination, the notional principal of the underlying IO is not large relative to the principal of the underlying interest-bearing CMO and will decline at the same rate as the principal on the interest-bearing CMO. As a result, the risks associated with this combination more closely resemble the risks associated with the underlying interest-bearing CMO than the risks associated with the IO or any other SMBS.

This proposed rule, if adopted, will authorize FCUs and corporate credit unions to invest in an exchangeable CMO representing interests in one or more IOs or POs if the exchangeable CMO meets certain conditions.

One condition concerns the rate of amortization of the underlying IOs and POs. Specifically, for an exchangeable CMO representing one or more IOs, the notional principal of each IO must decline at the same rate as the principal on one or more non-IO CMOs included in the combination. For an exchangeable CMO representing one or more POs, the principal of each PO must decline at the same rate as the notional principal of one or more IOs included in the combination or at the same rate as the principal on one or more interest-bearing CMOs included in the combination. This requirement helps mitigate the risk associated with the IO and PO SMBS.

Each exchangeable CMO has an offering circular, which includes the final prospectus and all supplements to that prospectus, that contains performance characteristics for the exchangeable CMO and its various underlying CMOs. One set of tables, labeled as ''decrement'' or ''declining balance'' tables, displays the remaining principal (or, for IOs, the notional principal) balance on each CMO at periodic intervals following issuance, assuming certain principal repayment speeds for the mortgage pool as a whole. The Board believes that the principal, or notional principal, of two underlying CMOs will decline at the same rate only if the two CMOs share the same decrement or declining balance table. The rule text also requires this condition be satisfied throughout the life of the investment, so that a credit union may not exercise a call option, or other embedded option, that causes the exchangeable CMO to fail this condition after purchase.

The amortization condition discussed above helps mitigate risk, but by itself will not ensure that an exchangeable CMO representing interests in underlying SMBS does not perform like a stand-alone SMBS. For example, an issuer might fashion an exchangeable CMO that represents ownership in two securities: (1) An interest-bearing CMO and (2) an IO, but with the notional principal of the IO much larger than the principal of the interest-bearing CMO. Even assuming the notional principal on the IO declines at the same rate as the principal on the interest-bearing CMO, the exchangeable CMO representing these two interests will still have the substantive risk characteristics of the underlying IO.

Accordingly, the Board finds it necessary to add another condition: that, at the time of purchase, the ratio of the market price to the remaining principal balance is between .8 and 1.2, meaning that the discount or premium of the market price to par must be less than 20 points. In the Board's view, if an exchangeable CMO is priced at a premium of 20% or more to the remaining principal balance due on the CMO at the time of purchase, or its ''par,'' the CMO has substantially the same risk characteristics as an IO. Similarly, if an exchangeable CMO is priced at a discount of 20% or more to par, it has substantially the same risk characteristics as a PO. ''Remaining principal balance'' refers to the actual principal remaining to be paid, not notional principal.

The proposed rule also states that credit unions may not exercise the right to exchange an exchangeable CMO if it represents an interest in one or more impermissible SMBS. Corporate credit unions with part I or part II Expanded Authorities may exercise the exchange

function if the resulting SMBS are all permissible under those authorities.

This proposed rule also adds a definition of collateralized mortgage obligation to part 703 of NCUA's rules and regulations. This definition parallels the definition found in NCUA's corporate rule. 12 CFR 704.2.

B. Technical Corrections and Minor Changes

The Board also proposes to make several technical corrections and other minor changes to parts 703 and 704.

1. Investment and Deposit Activities (Part 703)

The Board proposes to modify the definitions of put and call in § 703.2. Puts and calls are parallel devices, with a put giving the holder the option to sell, and a call giving the holder an option to buy, a security under certain conditions. The proposed definitions reflect this relationship more closely. The Board also proposes to modify the definition of put to clarify that the exercise of a put need only be during a fixed time period rather than, as currently stated, ''at any time until the stated expiration date.''

Section 703.2 defines ''custodial agreement'' and limits such agreements to those where one party agrees to exercise ordinary care in the safekeeping of securities. The term ''custodial agreement'' only appears in § 703.9(a), and that section references a ''written custodial agreement that requires the safekeeper to exercise, at least, ordinary care.'' Accordingly, the use of ''ordinary care'' in the definition of custodial agreement is redundant and the Board proposes to eliminate it.

The Board wishes to amend the current definition of derivative in part 703. The Board intends that the term derivative mean any derivative instrument that, under generally accepted accounting principles (GAAP), must be recognized as an asset or liability in the statement of financial condition and be valued at fair market value. Currently, FASB Statement No. 133 (FAS 133), as amended and interpreted, discusses the accounting treatment of derivative instruments, which include certain financial contracts and other contracts that meet conditions specified in FAS 133. Stand-alone interest rate swaps, options, swaptions, and futures, for example, are derivative instruments under FAS 133 that must be recognized as assets or liabilities and valued at fair market value and so are considered to be derivatives for purposes of parts 703 and 704. In contrast, embedded options that are not required under GAAP to be accounted for separately from the host contract are not derivatives for purposes of parts 703 and 704.

Sections 703.8(b)(3) and 703.9(d) employ the term ''nationally-recognized statistical rating agencies.'' The Board proposes to replace this term with the more commonly used ''nationally-recognized statistical rating organizations.''

Section 703.14(g) allows for the purchase, subject to certain conditions, of European financial options contracts to fund the payment of dividends on member share certificates. One condition in paragraph (g)(4) requires that ''[t]he options' expiration dates coincide with the maturity date of the share certificate.'' The Board proposes a change to allow these options to expire ''no later than the maturity date of the share certificate.'' This change will provide more flexibility in the use of options.

In § 703.14(g)(13), the Board proposes to replace the word ''it'' with ''its.''

2. Corporate Credit Unions (Part 704)

In § 704.2, the Board proposes to amend the definitions of ''small business related security'' and ''weighted average life'' to make them identical to the definitions of those terms in § 703.2. Also, the Board proposes to revise § 704.8(a)(4) by changing the phrase ''interest rate risk simulation tests'' to ''interest rate sensitivity analysis requirements.'' Section 704.8(a)(4) cross-references § 704.8(d) which uses the phrase ''interest rate sensitivity analysis requirements.'' The Board also proposes to add a definition of ''derivatives'' to part 704. The proposed part 704 definition is identical to the amended definition proposed for part 703 and discussed above.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under $10 million in assets). This proposed rule expands the investment authority granted to FCUs and corporate credit unions. The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

12 CFR Part 703

Credit unions, Investments.

12 CFR Part 704

Corporate credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 22, 2004.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, NCUA proposes to amend 12 CFR part 703 and 12 CFR part 704 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

2. Amend § 703.2 to revise the definitions of *Call, Custodial Agreement, Derivatives,* and *Put,* and add definitions of *Collateralized Mortgage Obligation* and *Exchangeable Collateralized Mortgage Obligation,* as follows:

§ 703.2 Definitions.

* * * * *

Call means an option that gives the holder the right to buy a specified quantity of a security at a specified price during a fixed time period.

* * * * *

Collateralized Mortgage Obligation (CMO) means a multi-class mortgage related security.

* * * * *

Custodial Agreement means a contract in which one party agrees to hold securities in safekeeping for others.

* * * * *

Derivatives means any derivative instrument, as defined under generally accepted accounting principles (GAAP), that GAAP requires be recognized as an asset or liability in the statement of financial condition and be valued at fair market value. Stand-alone interest rate swaps, options, swaptions, and futures, for example, are derivatives. Embedded options that are not required under GAAP to be accounted for separately from the host contract are not derivatives.

* * * * *

Exchangeable Collateralized Mortgage Obligation means a collateralized mortgage obligation (CMO) that represents beneficial ownership interests in a combination of two or more underlying CMOs. The holder of an exchangeable CMO may pay a fee and take delivery of the underlying CMOs.

* * * * *

Put means an option that gives the holder the right to sell a specified quantity of a security at a specified price during a fixed time period.

* * * * *

3. Amend § 703.8 by revising the second sentence of paragraph (b)(3) to read as follows:

§ 703.8 Broker-dealers.

* * * * *

(b) * * *

(3) * * * The federal credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

* * * * *

4. Amend § 703.9 by revising the second sentence of paragraph (d) to read as follows:

§ 703.9 Safekeeping of investments.

* * * * *

(d) * * * The federal credit union should consider current financial data, annual reports, reports of nationally-recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

5. Amend § 703.14 to revise paragraph (g)(4) and paragraph (g)(13) introductory text to read as follows:

§ 703.14 Permissible investments.

* * * * *

(g) * * *

(4) The options' expiration dates are no later than the maturity date of the share certificate.

* * * * *

(13) The federal credit union provides its board of directors with a monthly report detailing at a minimum:

* * * * *

6. Amend § 703.16 to revise paragraph (e) and add paragraph (f) to read as follows:

§ 703.16 Prohibited investments.

* * * * *

(e) *Stripped mortgage backed securities (SMBS).* A federal credit union may not invest in SMBS or securities that represent interests in SMBS except as described in paragraph (e)(1) of this section.

(1) A federal credit union may invest in and hold exchangeable collateralized mortgage obligations (exchangeable CMOs) representing beneficial ownership interests in one or more interest-only CMOs (IO CMOs) or principal-only CMOs (PO CMOs), but only if:

(i) At the time of purchase, the ratio of the market price to the remaining principal balance is between .8 and 1.2, meaning that the discount or premium of the market price to par must be less than 20 points, and

(ii) Throughout the life of the investment, the notional principal on each underlying IO CMO declines at the same rate as the principal on one or more of the underlying non-IO CMOs, and the principal on each underlying PO CMO declines at the same rate as the principal, or notional principal, on one or more of the underlying non-PO CMOs.

(2) A federal credit union that invests in an exchangeable CMO may exercise the exchange option only if all of the underlying CMOs are permissible investments for that credit union.

(f) *Other prohibited investments.* A federal credit union may not purchase residual interests in collateralized mortgage obligations/real estate mortgage investment conduits, or small business related securities.

PART 704—CORPORATE CREDIT UNIONS

7. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1781, and 1789.

8. Amend § 704.2 to add definitions of *Derivatives* and *Exchangeable collateralized mortgage obligation*, and to revise the definitions of *Small business related security and Weighted average life*, as follows:

§ 704.2 Definitions.

* * * * *

Derivatives means any derivative instrument, as defined under generally accepted accounting principles (GAAP), that GAAP requires be recognized as an asset or liability in the statement of financial condition and be valued at fair market value. Stand-alone interest rate swaps, options, swaptions, and futures, for example, are derivatives. Embedded options that are not required under GAAP to be accounted for separately from the host contract are not derivatives.

* * * * *

Exchangeable collateralized mortgage obligation means a collateralized mortgage obligation (CMO) that represents beneficial ownership interests in a combination of two or more underlying CMOs. The holder of an exchangeable CMO may pay a fee and take delivery of the underlying CMOs.

* * * * *

Small business related security means a security as defined in Section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)), *e.g.*, a security that is rated in 1 of the 4 highest rating categories by at least one nationally recognized statistical rating organization, and represents an interest in 1 or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar

institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company. This definition does not include Small Business Administration securities permissible under section 107(7) of the Act.

* * * * *

Weighted average life means the weighted-average time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time at which it is expected to be received (based on a reasonable and supportable estimate of that time) and then summing and dividing by the total amount of principal.

* * * * *

9. Amend § 704.5 by revising paragraphs (h)(1) and (h)(4) and adding paragraph (h)(5) to read as follows:

§ 704.5 Investments.

* * * * *

(h) * * *

(1) Purchasing or selling derivatives.

* * * * *

(4) Purchasing mortgage servicing rights, small business related securities, or residual interests in collateralized mortgage obligations/real estate mortgage investment conduits or asset-backed securities; and

(5) Purchasing stripped mortgage backed securities (SMBS), or securities that represent interests in SMBS, except as described as follows:

(i) A corporate credit union may invest in exchangeable collateralized mortgage obligations (exchangeable CMOs) representing beneficial ownership interests in one or more interest-only CMOs (IO CMOs) or principal-only CMOs (PO CMOs), but only if:

(A) At the time of purchase, the ratio of the market price to the remaining principal balance is between .8 and 1.2, meaning that the discount or premium of the market price to par must be less than 20 points, and

(B) Throughout the life of the investment, the notional principal on each underlying IO CMO declines at the same rate as the principal on one or more of the underlying non-IO CMOs, and the principal on each underlying PO CMO declines at the same rate as the principal, or notional principal, on one or more of the underlying non-PO CMOs.

(ii) A corporate credit union that invests in an exchangeable CMO may exercise the exchange option only if all of the underlying CMOs are permissible investments for that credit union.

10. Amend § 704.8 by revising paragraph (a)(4) to read as follows:

§ 704.8 Asset and liability management.

(a) * * *

(4) Policy limits and specific test parameters for the interest rate sensitivity analysis requirements set forth in paragraph (d) of this section; and

* * * * *

[FR Doc. 04–1765 Filed 1–30–04; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 153

[0790–AH73]

Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members

AGENCY: General Counsel of the Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Military Extraterritorial Jurisdiction Act of 2000 (MEJA) establishes Federal criminal jurisdiction over whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year (*i.e.,* a felony offense) while employed by or accompanying the Armed Forces outside the United States, certain members of the Armed Forces subject to the Uniform Code of Military Justice, and former service members.

Section 3266 of MEJA directs that the Secretary of Defense, after consultation with the Secretary of State and the Attorney General, shall prescribe regulations, uniform throughout the Department of Defense, governing the apprehension, detention, delivery, and removal of persons from overseas locations to the United States for prosecution in Federal district courts under MEJA, and the facilitation of proceedings under section 3265 of MEJA. Under the direction of the General Counsel of the Department of Defense, this part is proposed as the required regulations. This proposed part implements policies and procedures, and assigns responsibilities, under MEJA, for exercising extraterritorial criminal jurisdiction over certain military personnel, former service members of the United States Armed Forces, and over civilians employed by or accompanying the Armed Forces outside the United States (as specifically defined in section 3267 of MEJA).

DATES: Consideration will be given to all comments received on or before April 2, 2004.

ADDRESSES: Submit comments to Robert E. Reed, ODGC (P&HP), Office of the General Counsel of the Department of Defense, 1600 Defense Pentagon, Room 3E999, Washington, DC 20301–1600.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Reed, ODGC (P&HP), (703) 695–1055, *reedr@osdgc.osd.mil*.

SUPPLEMENTARY INFORMATION: In accordance with Department of Defense, Washington Headquarters Services, Administrative Instruction Number 102, ''A DoD issuance or document shall be published in the **Federal Register** for public comment if it * * * has a direct or substantial impact on the public or any significant portion of the public.'' The Office of Management and Budget (OMB) has provided all government agencies guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public. OMB has directed the agencies to publish a notice in the **Federal Register**, by May 1, 2002, that their draft policies complying with the OMB requirement are available for public view and comment on their public Web sites. The draft Department of Defense Instruction is available on the Deputy General Counsel (Personnel and Health Policy), Office of the General Counsel public Web site located at *http://www.defenselink.mil/dodgc/php*.

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

It has been determined that 32 CFR part 153 is not a significant regulatory action. This rule does not: (1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs, the environment; public health or safety; or State, local, or tribal governments or communities; (2) create 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 obligation or 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 Executive Order 12866.

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

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a

significant economic impact on a substantial number of small entities. This part presents no economic impact and solely involves the rules and procedures governing the procedures for the Department of Defense to comply with and implement the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261 *et seq.*)

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

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

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

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

List of Subjects in 32 CFR Part 153

Courts, Intergovernmental relations, Military personnel.

Accordingly, 32 CFR part 153 is proposed to be revised to read as follows:

PART 153—CRIMINAL JURISDICTION OVER CIVILIANS EMPLOYED BY OR ACCOMPANYING THE ARMED FORCES OUTSIDE THE UNITED STATES, CERTAIN SERVICE MEMBERS, AND FORMER SERVICE MEMBERS

Sec.
153.1 Purpose.
153.2 Applicability and scope.
153.3 Definitions.
153.4 Responsibilities.
153.5 Procedures.
Appendix A to Part 153—Guidelines
Appendix B to Part 153—Acknowledgment of Limited Legal Representation (Sample)

Authority: 18 U.S.C. Chapter 212

§ 153.1 Purpose.

This part:

(a) Implements policies and procedures, and assigns responsibilities, under the ''Military Extraterritorial Jurisdiction Act of 2000'' (hereinafter the Act) for exercising extraterritorial criminal jurisdiction over certain military personnel, former service members of the United States Armed Forces, and over civilians employed by or accompanying the Armed Forces outside the United States (U. S.).

(b) Implements section 3266 of the Act.

§ 153.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard by agreement with the Department of Homeland Security when it is not operating as a Service of the Department of the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as ''the DoD Components''). The term ''Military Services,'' as used in this part, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) While some Federal criminal statutes are expressly or implicitly extraterritorial, many acts described therein are criminal only if they are committed within ''the special maritime and territorial jurisdiction of the United States'' or if they affect interstate or foreign commerce. Therefore, in most instances, Federal criminal jurisdiction ends at the nation's borders. State criminal jurisdiction, likewise, normally ends at the boundaries of each State. Because of these limitations, acts committed by military personnel, former service members, and civilians employed by or accompanying the Armed Forces in foreign countries, which would be crimes if committed in the U.S., often do not violate either Federal or State criminal law. Similarly, civilians are generally not subject to prosecution under the Uniform Code of Military Justice (UCMJ), unless Congress had declared a ''time of war'' when the acts were committed. As a result, these acts are crimes, and therefore criminally punishable, only under the law of the foreign country in which they occurred. *See* section 2 of Report Accompanying the Act. While the U.S. possessed disciplinary jurisdiction over such actions, and was able, therefore, to exercise concurrent jurisdiction under a Status of Forces Agreement (SOFA) in places around the world, the Act and this part are intended to address this jurisdictional gap with respect to criminal sanctions.

(c) Nothing in this part may be construed to deprive a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or the law of war may be tried by court-martial, military commission, provost court, or other military tribunal (section 3261(c) of title 18, U.S.C.). In some cases, conduct that violates section 3261(a) of the Act may also violate the UCMJ, or the law of war generally. Therefore, for military personnel, military authorities would have concurrent jurisdiction with a U.S. District Court to try the offense. The Act was not intended to divest the military of jurisdiction and recognizes the predominant interest of the military in disciplining its service members, while still allowing for the prosecution of military members with non-military co-defendants in a U.S. District Court under section 3261(d) of the Act.

§ 153.3 Definitions.

(a) *Accompanying the Armed Forces Outside the United States.* As defined in section 3267 of the Act, the dependent of:

(1) A member of the Armed Forces; or

(2) A civilian employee of the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

(3) A DoD contractor (including a subcontractor at any tier); or

(4) An employee of a DoD contractor (including a subcontractor at any tier); and

(5) Residing with such member, civilian employee, contractor, or contractor employee outside the United States; and

(6) Not a national of or ordinarily resident in the host nation.

(b) *Active Duty.* Full-time duty in the active military service of the United States. It includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the Military Department concerned. *See* section 101(d)(1) of title 10, United States Code.

(c) *Armed Forces.* The Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard. *See* section 101(a)(4) of title 10, United States Code.

(d) *Arrest.* To be taken into physical custody by law enforcement officials.

(e) *Charged.* As used in the Act and this part, this term is defined as an indictment or the filing of information against someone under the Federal Rules of Criminal Procedure. *See* the analysis to section 3264 of the Report Accompanying the Act.

(f) *Civilian Component.* A term used in Status of Forces Agreements. For this part, this term is the equivalent of the definition of persons ''employed by the Armed Forces outside the United States'' in paragraph (j) of this section and section 3267(a)(1) of the Act.

(g) *Dependent.* A person for whom a military member, civilian employee, contractor (or subcontractor at any tier) has legal responsibility while that

person is residing outside the United States with or accompanying that military member, civilian employee, contractor (or subcontractor at any tier), and while that responsible person is so assigned, employed or performing a contractual obligation to the Department of Defense. For purposes of this part, a person's ''command sponsorship'' status while outside the United States is not to be considered, except that there shall be a rebuttable presumption that a command-sponsored individual is a dependent.

(h) *Detention.* To be taken into custody by law enforcement officials and placed under physical restraint.

(i) *District.* A District Court of the United States.

(j) *Employed by the Armed Forces Outside the United States.* Any person employed as:

(1) A civilian employee of the Department of Defense (including a non-appropriated fund instrumentality of the Department); or

(2) A DoD contractor (including subcontractors at any tier); or

(3) An employee of a DoD contractor (including subcontractors at any tier); when the person:

(i) Is present or resides outside the United States in connection with such employment; and

(ii) Is not a national of or ordinarily resident in the host nation.

(k) *Federal Magistrate Judge.* As used in the Act and this part, includes both Judges of the United States and U.S. Magistrate Judges, titles that, in general, should be given their respective meanings found in the Federal Rules of Criminal Procedure. The term does not include Military Magistrates or Military Judges, as prescribed by the UCMJ, or regulations of the Military Departments or the Department of Defense.

(l) *Felony Offense.* Conduct that is an offense punishable by imprisonment for more than one year if committed under U.S. laws for the special maritime and territorial jurisdiction of the United States. *See* section 1 of title 18, United States Code. Although the Act, uses the conditional phrase ''if committed within the special maritime and territorial jurisdiction of the United States,'' acts that would be a Federal crime regardless of where they are committed in the U.S., such as drug crimes contained in chapter 13 of title 21, United States Code, also fall within the scope of section 3261(a) of the Act. *See* the analysis to section 3261 of the Report Accompanying the Act.

(m) *Host Country National.* A person who is not a citizen of the United States, but who is a citizen of the foreign country in which that person is located.

(n) *Inactive Duty Training.* Duty prescribed for Reserves by the Secretary of the Military Department concerned under section 206 of title 37, United States Code, or any other provision of law; and special additional duties authorized for Reserves by an authority designated by the Secretary of the Military Department concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned. Inactive Duty Training includes those duties performed by Reserves in their status as members of the National Guard. *See* section 101(d)(7) of title 10, United States Code.

(o) *Juvenile.* As defined in section 5031 of title 18, U.S.C., this term is defined as a person who has not attained his or her eighteenth birthday.

(p) *Military Department.* The Department of the Army, the Department of the Navy, and the Department of the Air Force. *See* section 101(a)(8) of title 10, United States Code.

(q) *National of the United States.* As defined in section 1101(a)(43) of title 8, United States Code.

(r) *Outside the United States.* Those places that are not within the definition of ''United States'' in paragraph (v) of this section and, with the exception of subparagraph 7(9) of title 18, United States Code, those geographical areas and locations that are not within the Special Maritime and Territorial Jurisdiction of the United States, as defined in section 7 of title 18, United States Code. The locations defined in subparagraph 7(9) of title 18, United States Code are to be considered ''Outside the United States'' for the purposes of this part. *See* sections 3261–3267 of title 18, United States Code.

(s) *Qualified Military Counsel.* Judge advocates assigned to or employed by the Military Services and designated by the respective Judge Advocate General, or a designee, to be professionally qualified and trained to perform defense counsel responsibilities under the Act.

(t) *Staff Judge Advocate.* A judge advocate so designated in the Army, the Air Force, or the Marine Corps; the principal legal advisor of a command in the Navy and the Coast Guard who is a judge advocate, regardless of job title. *See* Rule for Courts-Martial 103(17), Manual for Courts-Martial, United States (2002 Edition).

(u) *Third Country National.* A person whose citizenship is that of a country other than the U.S. and the foreign country in which the person is located.

(v) *United States.* As defined in section 5 of title 18, United States Code, this term, as used in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except for the Panama Canal Zone.

§ 153.4 Responsibilities.

(a) The *General Counsel of the Department of Defense (GC, DoD)* shall provide initial coordination and liaison with the Departments of Justice and State, on behalf of the Military Departments, regarding a case for which investigation and/or Federal criminal prosecution under the Act is contemplated. This responsibility may be delegated entirely, or delegated for categories of cases, or delegated for individual cases. The General Counsel, or designee, shall advise the Domestic Security Section of the Criminal Division, Department of Justice (DSS/DOJ), as soon as practicable, when DoD officials intend to recommend that the DOJ consider the prosecution of a person subject to the Act for offenses committed outside the United States.

(b) The *Inspector General of the Department of Defense (DoDIG)* shall:

(1) Pursuant to section 4(d) of the Inspector General Act of 1978, as amended (5 U.S.C. App. 3), ''report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.'' This statutory responsibility is generally satisfied once an official/special agent of the Office of the Inspector General of the Department of Defense (OIG DOD) notifies either the cognizant Department of Justice representative or the Assistant Attorney General (Criminal Division) of the ''reasonable grounds.''

(2) Pursuant to section 8(c)(5) of the Inspector General Act of 1978, as amended (5 U.S.C. App. 3), and section 141(b) of title 10, U.S.C., ensure the responsibilities described in DoD Directive 5525.7, ''Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes,'' January 22, 1985,[1] to ''implement the investigative policies, monitor compliance by DoD criminal investigative organizations, and provide specific guidance regarding investigative matters, as appropriate'' are satisfied relative to violations of the Military Extraterritorial Jurisdiction Act of 2000.

(c) The *Heads of Military Law Enforcement Organizations and Military*

[1] Available from Internet site *http://www.dtic.mil/whs/directives.*

Criminal Investigative Organizations, or their Designees, shall:

(1) Advise the Commander and Staff Judge Advocate (or Legal Advisor) of the Combatant Command concerned, or designees, of an investigation of an alleged violation of the Act. Such notice shall be provided as soon as practicable. In turn, the GC, DoD or designee, shall be advised so as to ensure notification of and consultation with the Departments of Justice and State regarding information about the potential case, including the host nation's position regarding the case. At the discretion of the GC, DoD, other agencies and organizations (such as the Legal Counsel to the Chairman of the Joint Chiefs of Staff and Secretary of the Military Department that sponsored the person into the foreign country) shall be informed, as appropriate. Effective investigations lead to successful prosecutions and, therefore, these cases warrant close coordination and cooperation between the Departments of Defense, Justice, and State.

(2) Provide briefings to, and coordinate with, appropriate local law enforcement authorities in advance or, if not possible, as soon thereafter as is practicable, of investigations or arrests in specific cases brought under the Act. If not previously provided to local law enforcement authorities, such briefings about the case shall, at a minimum, describe the Host Nation's position regarding the exercise of jurisdiction under the Act that followed from any briefings conducted pursuant to appendix A of this part.

(d) The *Domestic Security Section, Criminal Division, Department of Justice*, has agreed to:

(1) Provide preliminary liaison with the Department of Defense, coordinate initial notifications with other Federal agencies and law enforcement organizations, make preliminary decisions regarding proper venue, and arrange for the further assignment of DOJ responsibilities.

(2) Coordinate with the U.S. Attorney's office to arrange for a Federal Magistrate Judge to preside over the initial proceedings required by the Act. Although the assignment of a particular Federal Magistrate Judge shall be governed ordinarily by the jurisdiction where a prosecution would occur, such assignment does not determine the ultimate venue of any prosecution that may be undertaken. Appropriate venue is determined in accordance with the requirements of section 3238 of title 18, United States Code.

(3) Coordinate the assistance to be provided the Department of Defense with the U.S. Attorney's office where venue for the case shall be established; and

(4) Continue to serve as a single point of contact for DoD personnel regarding all investigations that may lead to criminal prosecutions and all associated pretrial matters, until such time as DSS/DOJ advises that the case has become the responsibility of a specific U.S. Attorney's Office.

(e) The *Commanders of the Combatant Commands* shall:

(1) Assist the DSS/DOJ on specific cases occurring within the Commander's area of responsibility. These responsibilities include providing available information and other support essential to an appropriate and successful prosecution under the Act with the assistance of the Commanders' respective Staff Judge Advocates (or Legal Advisors), or their designees, to the maximum extent allowed and practicable.

(2) Ensure command representatives are made available, as necessary, to participate in briefings of appropriate host nation authorities concerning the operation of this Act and the implementing provisions of this part.

(3) Determine when military necessity in the overseas theater requires a waiver of the limitations on removal in section 3264(a) of the Act and when the person arrested or charged with a violation of the Act shall be moved to the nearest U.S. military installation outside the United States that is adequate to detain the person and facilitate the initial proceedings prescribed in section 3265(a) of the Act and this part. Among the factors to be considered are the nature and scope of military operations in the area, the nature of any hostilities or presence of hostile forces, and the limitations of logistical support, available resources, appropriate personnel, or the communications infrastructure necessary to comply with the requirements of section 3265 of the Act governing initial proceedings.

(4) Annually report to the GC, DoD, by the last day of February, all cases involving the arrest of persons for violations of the Act; persons placed in temporary detention for violations of the Act; the number of requests for Federal prosecution under the Act, and the decisions made regarding such requests.

(5) Determine the suitability of the locations and conditions for the temporary detention of juveniles who commit violations of the Act within the Commander's area of responsibility. The conditions of such detention must, at a minimum, meet the requirements of section 5035 of title 18, United States Code.

(6) As appropriate, promulgate regulations consistent with and implementing this part. The combatant commander's duties and responsibilities pursuant to this part may be delegated.

(f) The *Secretaries of the Military Departments* shall:

(1) Consistent with the provisions of paragraph (d) of this section, make provision for defense counsel representation at initial proceedings conducted outside the United States pursuant to the Act for those persons arrested or charged with violations of section 3261(a) of the Act.

(2) Issue regulations establishing procedures that, to the maximum extent practicable, provide notice to all persons covered by the Act who are not nationals of the United States but who are employed by or accompanying the Armed Forces outside the United States, with the exception of individuals who are nationals of or ordinarily resident in the host nation, that they are potentially subject to the criminal jurisdiction of the United States under the Act. At a minimum, such regulations shall require that employees and persons accompanying the Armed Forces outside the United States, who are not nationals of the United States, be informed of the jurisdiction of the Act at the time that they are hired for overseas employment, or upon sponsorship into the overseas command, whichever event is earlier applicable. Such notice shall also be provided during employee training and any initial briefings required for these persons when they first arrive in the foreign country. For employees and persons accompanying the Armed Forces outside the United States who are not nationals of the United States, but who have already been hired or are present in the overseas command at [the time this part becomes effective], such notice shall be provided by [60 days after the effective date of this part].

(3) Ensure that orientation training is also provided for all U.S. nationals who are, or who are scheduled to be, employed by or accompanying the Armed Forces outside the United States, including their dependents, and include information that such persons are potentially subject to the criminal jurisdiction of the United States under the Act.

(i) For military members, civilian employees of the Department of Defense and civilians accompanying the Armed Forces overseas, notice and briefings on the applicability of the Act shall, at a minimum, be provided to them and their dependents when travel orders are issued and, again, upon their arrival at

command military installations outside the United States.

(ii) Failure to provide notice or orientation training pursuant to paragraphs (f)(2) and (f)(3) of this section, respectively, shall not create any rights or privileges in the persons referenced and shall not operate to defeat the jurisdiction of a court of the United States or provide a defense or other remedy in any proceeding arising under the Act or this part.

(4) Provide training to personnel who are authorized under the Act and designated pursuant to this part to make arrests outside the United States of persons who allegedly committed a violation of section 3261(a) of the Act. The training, at a minimum, shall include the rights of individuals subject to arrest.

§ 153.5 Procedures.

(a) *Applicability.* (1) *Offenses and punishments.* Section 3261(a) of the Act establishes a separate Federal offense under title 18, U.S.C. for an act committed outside the United States that would be a felony crime as if such act had been committed within the Special Maritime and Territorial Jurisdiction of the United States, as defined in section 7 of title 18, U.S.C. Charged as a violation of section 3261(a) of the Act, the elements of the offense and maximum punishment are the same as the crime committed within the geographical limits of section 7 of title 18, U.S.C., but without the requirement that the conduct be committed within such geographical limits. *See* section 1 of the Section-By-Section Analysis and Discussion to section 3261 in the Report Accompanying the Act.

(2) *Persons subject to this part.* This part applies to certain military personnel, former military service members, and persons employed by or accompanying the Armed Forces outside the United States, and their dependents, as those terms are defined in § 153.3, alleged to have committed an offense under the Act while outside the United States. For purposes of the Act and this part, persons employed by or accompanying the Armed Forces outside the United States are subject to the military law of the United States, as that term is used and understood in an international SOFA.

(3) *Military service members.* Military service members subject to the Act's jurisdiction are:

(i) Only those active duty service members who, by Federal indictment or information, are charged with committing an offense with one or more defendants, at least one of whom is not subject to the UCMJ. *See* section 3261(d)(2) of the Act.

(ii) Members of a Reserve component with respect to an offense committed while the member was not on active duty or inactive duty for training (in the case of members of the Army National Guard of the United States or the Air National Guard of the United States, only when in Federal service), are not subject to UCMJ jurisdiction for that offense and, as such, are amenable to the Act's jurisdiction without regard to the limitation of section 3261(d)(2) of the Act.

(4) *Former military service members.* Former military service members subject to the Act's jurisdiction are:

(i) Former service members who were subject to the UCMJ at the time the alleged offense was committed but are no longer subject to the UCMJ with respect to the offense due to their release or separation from active duty.

(ii) Former service members, having been released or separated from active duty, who thereafter allegedly commit an offense while in another qualifying status, such as while a civilian employed by or accompanying the Armed Forces outside the United States, or while the dependent of either or of a person subject to the UCMJ.

(5) *Civilians employed by the Armed Forces.* Civilian employees employed by the U.S. Armed Forces outside the United States (as defined in § 153.3), who commit an offense under the Act while present or residing outside the U.S. in connection with such employment, are subject to the Act and the provisions of this part. Such civilian employees include:

(i) Persons employed by the Department of Defense (including a non-appropriated fund instrumentality of the Department of Defense).

(ii) Persons employed as a DoD contractor (including a subcontractor at any tier).

(iii) Employees of a DoD contractor (including a subcontractor at any tier).

(6) *Civilians accompanying the Armed Forces.* Subject to the requirements of paragraph (a)(5)(ii) of this section, the following persons are civilians accompanying the Armed Forces outside the United States who are covered by the Act and the provisions of this part:

(i) Dependents of:

(A) Active duty service members.

(B) Members of the reserve component while the member was on active duty or inactive duty for training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States, only when in Federal service.

(C) Former service members who are employed by or are accompanying the Armed Forces outside the United States.

(D) Civilian employees of the Department of Defense (including non-appropriated fund instrumentalities of the Department of Defense).

(E) DoD contractors (including a subcontractor at any tier).

(F) Employees of a DoD contractor (including a subcontractor at any tier).

(ii) In addition to the person being the dependent of a person who is listed in paragraph (a)(6)(i) of this section, jurisdiction under the Act requires that the dependent also:

(A) Reside with one of the persons listed in paragraph (a)(6)(i) of this section.

(B) Allegedly commit the offense while outside the United States; and

(C) Not be a national of, or ordinarily resident in, the host nation where the offense is committed.

(iii) Command sponsorship of the dependent is not required for the Act and this part to apply.

(iv) If the dependent is a juvenile, as defined in § 153.3, who engaged in conduct that is subject to prosecution under section 3261(a) of the Act, then the provisions of chapter 403 of title 18, United States Code would apply to U.S. District Court prosecutions.

(7) *Persons not subject to the Act or the procedures of this part.* (i) Persons who are the nationals of, or ordinarily resident in, the host nation where the offense is committed, regardless of their employment or dependent status.

(ii) Third Country Nationals who are not ordinarily resident in the host nation, and who meet the definition of ''a person accompanying the Armed Forces outside the United States,'' may have a nexus to the United States that is so tenuous that it places into question whether the Act's jurisdiction should be applied and whether such persons should be subject to arrest, detention, and prosecution by U.S. authorities. Depending on the facts and circumstances involved, and the relationship or connection of the foreign national with the U.S. Armed Forces, it may be advisable to consult first with the DSS/DOJ before taking action with a view toward prosecution. In addition, to facilitate consultation with the government of the nation of which the Third Country National is a citizen, the State Department should be notified of any potential investigation or arrest of a Third Country National.

(iii) Persons, including citizens of the United States, whose presence outside the United States at the time the offense is committed, is not then either as a member of the Armed Forces, a civilian

employee of the Armed Forces, or accompanying the Armed Forces.

(A) Persons whose presence outside the United States at the time the offense is committed, is solely that of a tourist, a student, or a civilian employee or civilian accompanying any other agency, organization, business, or entity, not of the Armed Forces and not thereby employed or accompanying the Armed Forces, are not subject to the Act. Civilian employees of an agency, organization, business, or entity accompanying the Armed Forces outside the U.S. may, by virtue of the agency, organization, business, or entity relationship with the Armed Forces, be subject to the Act and this part.

(B) Persons who are subject to the Act and this part remain so while present, on official business or otherwise (*e.g.*, performing temporary duty or while in leave status), in a foreign country other than the foreign country to which the person is regularly assigned, employed, or accompanying the Armed Forces outside the United States.

(iv) Persons who have recognized dual citizenship with the United States and who are the nationals of, or ordinarily resident in, the host nation where the alleged conduct took place are not persons ''accompanying the Armed Forces outside the United States'' within the meaning of the Act and this part.

(v) Juveniles whose ages are below the minimum ages authorized for the prosecution of juveniles in U.S. District Court under the provisions of chapter 403 of title 18, United States Code.

(vi) Persons subject to the UCMJ (*see* sections 802–803 of title 10, U.S.C.) are not subject to prosecution under the Act unless, pursuant to section 3261(d)(2) of the Act, the member ceases to be subject to the UCMJ or an indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to the UCMJ. Retired members of a regular component who are entitled to pay remain subject to the UCMJ after retiring from active duty. Such retired members are not subject to prosecution under the Act unless section 3261(d)(2) of the Act applies.

(vii) A member of the reserve component who is subject to the UCMJ at the time the UCMJ offense was committed is not, by virtue of the termination of a period of active duty or inactive-duty for training, subject to the UCMJ and is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to UCMJ jurisdiction for that offense. Such reserve component members are not subject to the Act unless section 3261(d)(2) of the Act applies.

(viii) Whether Coast Guard members and civilians employed by or accompanying the Coast Guard outside the United States, and their dependents, are subject to the Act and this part depends on whether at the time of the offense the Coast Guard was operating as a separate Service in the Department of Homeland Security or as a Service in the Department of the Navy.

(b) *Investigation, arrest, detention, and delivery of persons to host nation authorities.* (1) *Investigation.* (i) Investigations of conduct reasonably believed to constitute a violation of the Act committed outside the United States must respect the sovereignty of the foreign nation in which the investigation is conducted. Such investigations shall be conducted in accordance with recognized practices with host nation authorities and applicable international law, SOFA and other international agreements. Unless not required by agreement, investigations shall, to the extent practicable, be coordinated with appropriate local law enforcement authorities when the host nation has interposed no objections after becoming aware of the Act.

(ii) When a Military Criminal Investigative Organization is the lead investigative organization, the criminal investigator, in order to assist DSS/DoJ and the designated U.S. Attorney representative in making a preliminary determination of whether the case warrants prosecution under the Act, shall provide a copy of the Investigative Report, or a summary thereof, to the DCO's Office of the Staff Judge Advocate at the location where the offense was committed to review and transmittal, through the combatant commander, to the DSS/DOJ or the designated U.S. Attorney representative. The Office of the Staff Judge Advocate shall also furnish the DSS/DOJ or the designated U.S. Attorney representative, as appropriate, an affidavit or declaration from the criminal investigator or other appropriate law enforcement official that sets for the probable cause basis for believing that a violation of the Act has occurred and that the person identified in the affidavit or declaration has committed the violation.

(iii) When the Defense Criminal Investigative Service (DCIS) is the lead investigative organization, the criminal investigator, in order to assist the DSS/DOJ and the designated U.S. Attorney representative in making a preliminary determination of whether the case warrants prosecution under the Act, shall provide a copy of the Investigative Report, or a summary thereof, to the DSS/DOJ or the designated U.S. Attorney representative, as appropriate. The criminal investigator shall also furnish the DSS/DOJ or the designated U.S. Attorney representative, an affidavit or declaration that sets forth the probable cause basis for believing that a violation of the Act has occurred and that the person identified in the affidavit or declaration has committed the violation. Within the parameters of section 4(d) of the Inspector General Act of 1978 (5 U.S.C. App. 3), the Inspector General may also notify the General Counsel of the Department of Defense and the DCO's Office of the Staff Judge Advocate at the location where the offense was committed, as appropriate.

(2) *Residence information.* To the extent that it can be determined from an individual's personnel records, travel orders into the overseas theater, passport, or other records, or by questioning upon arrest or detention, as part of the routine ''booking'' information obtained, an individual's last known residence in the United States shall be determined and forwarded promptly to the DSS/DOS or the designated U.S. Attorney representative. *See Pennsylvania* v. *Muniz,* 496 U.S. 582, at 601 (1990) and *United States* v. *D'Anjou,* 16 F. 3d 604 (1993). The information is necessary to assist in determining what law enforcement authorities and providers of pretrial services, including those who issue probation reports, shall ultimately have responsibility for any case that may develop. Determination of the individual's ''last known address'' in the United States is important in determining what Federal district would be responsible for any possible future criminal proceedings.

(i) Due to the venue provisions of section 3238 of title 18, U.S.C., the DSS/DOJ or the designated U.S. Attorney representative, as appropriate, shall be consulted prior to removal of persons arrested or charged with a violation of the Act by U.S. law enforcement officials. The venue for Federal criminal jurisdiction over offenses committed on the high seas or elsewhere beyond the jurisdiction of a particular State or District (as would be required under the Act), is in the Federal district in which the offender is arrested or first brought (*i.e.*, the individual's first arrival location in the United States). However, if the individual is not so arrested in or brought into any Federal district in the United States, then an indictment or information may be filed in the district of the person's last known residence. If no such last known address is known,

the indictment or information may be filed in the District of Columbia.

(ii) ''Last known residence'' refers to that U.S. location where the person lived or resided. It is not necessarily the person's legal domicile.

(iii) Prompt transmittal of venue information to the DSS/DOJ or the designated U.S. Attorney representative in the United States may prove helpful in determining whether a particular case may be prosecuted, and ultimately a pivotal factor in determining whether the host nation or the U.S. shall exercise its jurisdiction over the matter.

(iv) The Investigative Report, and any affidavit or declaration, as well as all other documents associated with a case shall be transmitted promptly by the command Staff Judge Advocate to the DSS/DOJ, or the designated U.S. Attorney representative. This may be accomplished through the use of facsimile or other means of electronic communication.

(3) *Notice of complaint or indictment.* Upon receipt of information from command authorities or Defense Criminal Investigation Organizations (the Defense Criminal Investigation Service, the Army's Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations) that a person subject to jurisdiction under this Act has violated section 3261(a) of the Act, the U.S. Attorney for the District in which there would be venue for a prosecution may, if satisfied that probable cause exists to believe that a crime has been committed and that the person identified has committed this crime, file a complaint under Federal Rule of Criminal Procedure 3. As an alternative, the U.S. Attorney may seek the indictment of the person identified. In either case, a copy of the complaint or indictment shall be provided to the Office of the Staff Judge Advocate of the overseas command that reported the offense. The DSS/DOJ or the designated U.S. Attorney representative will ordinarily be the source from which the command's Staff Judge Advocate is able to obtain a copy of any complaint or indictment against a person outside the United States who is subject to the jurisdiction under the Act. This may be accomplished through the use of facsimile or other means of electronic communication.

(4) *Arrest.* (i) Federal Rule of Criminal Procedure 4 takes the jurisdiction of the Act into consideration in stating where arrest warrants may be executed: ''Location. A warrant may be executed, or a summons served, within the jurisdiction of the United States or anywhere else a Federal statute authorizes an arrest.'' The Advisory Committee Note explains that the new language reflects the enactment of the Military Extraterritorial Jurisdiction Act permitting arrests of certain military and Department of Defense personnel overseas.

(ii) The Act specifically authorizes persons in DoD law enforcement positions, as designated by the Secretary of Defense, to arrest outside the United States, upon probable cause and in accordance with recognized practices with host nation authorities and applicable international agreements, those persons subject to the Act who violate section 3261(a) of the Act. Section 3262(a) of the Act constitutes authorization by law to conduct such functions pursuant to sections 801–946 of title 10, U.S.C. and therefore obviates the restrictions of the Posse Comitatus Act regarding military personnel supporting civilian law enforcement agencies.

(iii) When the host nation has interposed no objections after becoming aware of the Act, as referenced in paragraph (d) of appendix A to this part, arrests in specific cases shall, to the extent practicable, be first coordinated with appropriate local law enforcement authorities, unless not required by agreement.

(iv) Military and civilian special agents assigned to the Defense Criminal Investigative Organizations are hereby authorized by the Secretary of Defense to make an arrest, outside the United States, of a person who has committed an offense under section 3261(a) of the Act. Civilian special agents assigned to Defense Criminal Investigative Organizations while performing duties outside the U.S. shall make arrests consistent with the standardized guidelines established for such agents, as approved in accordance with sections 1585a, 4027, 7480, and 9027 of title 10, United States Code.

(v) Military personnel and DoD civilian employees (including local nationals, either direct hire or indirect hire) assigned to security forces, military police, shore patrol, or provost offices at military installations and other facilities located outside the United States are also authorized to make an arrest, outside the United States, of a person who has committed an offense under section 3261(a) of the Act. This authority includes similarly-assigned members of the Coast Guard law enforcement community, but only when the Coast Guard is operating at such locations as a Service of the Department of the Navy.

(vi) Law enforcement personnel thus designated and authorized by the Secretary of Defense in this Part may arrest a person, outside the United States, who is suspected of committing a felony offense in violation of section 3261(a) of the Act, when the arrest is based on probable cause to believe that such person violated section 3261(a) of the Act, and when made in accordance with applicable international agreements. Because the location of the offense and offender is outside the United States, it is not normally expected that the arrest would be based on a previously-issued Federal arrest warrant. Law enforcement personnel authorized to make arrests shall follow the Secretaries of the Military Departments' guidelines for making arrests without a warrant, as prescribed by sections 1585a, 4027, 7480, and 9027 of title 10, U.S.C. Authorizations issued by military magistrates under the UCMJ may not be used as a substitute for Federal arrest warrant requirements.

(5) *Temporary detention.* (i) The Commander of a Combatant Command, or designee, may order the temporary detention of a person, within the Commander's area of responsibility outside the United States, who is arrested or charged with a violation of the Act. The Commander of the Combatant Command, or designee, may determine that a person arrested need not be held in custody pending the commencement of the initial proceedings required by section 3265 of the Act and paragraph (d) of this section. The Commander of the Combatant Command may designate those component commanders or DCO commanders who are also authorized to order the temporary detention of a person, within the commanding officer's area of responsibility outside the United States, who is arrested or charged with a violation of the Act.

(ii) A person arrested may be detained temporarily in military detention facilities for a reasonable period, in accordance with regulations of the Military Departments and subject to the following:

(A) Temporary detention should be ordered only when a serious risk is believed to exist that the person shall flee and not appear, as required, for any pretrial investigation, pretrial hearing or trial proceedings, or the person may engage in serious criminal misconduct (*e.g.*, the intimidation of witnesses or other obstructions of justice, causing injury to others, or committing other offenses that pose a threat to the safety of the community or to the national security of the United States). The decision as to whether temporary detention is appropriate shall be made on a case-by-case basis. Section 3142 of

title 18, United States Code provides additional guidance regarding conditions on release and factors to be considered.

(B) A person arrested or charged with a violation of the Act who is to be detained temporarily shall, to the extent practicable, be detained in areas that separate them from sentenced military prisoners and military members who are in pretrial confinement pending trial by courts-martial.

(C) Separate temporary detention areas shall be used for male and female detainees.

(D) Generally, juveniles should not be ordered into temporary detention. However, should circumstances warrant temporary detention, the conditions of such temporary detention must comply with the requirements of section 5035 of title 18, U.S.C. Appointment of a guardian *ad litem* may be required under section 5034 of title 18, U.S.C. to represent the interests of the juvenile when the juvenile's parents are not present or when the parents' interests may be adverse to that of the juvenile.

(iii) Persons arrested or charged with a violation of the Act, upon being ordered into temporary detention and processed into the detention facility, shall, as part of the processing procedures, be required to provide the location address of their last U.S. residence as part of the routine booking questions securing ''biographical data necessary to complete booking or pretrial services.'' *See United States* v. *D'Anjou,* 16 F. 3d 604 (1993). This information shall be recorded in the detention documents and made available to the DCO's Office of the Staff Judge Advocate. This information shall be forwarded with other case file information, including affidavits in support of probable cause supporting the arrest and detention, to the DSS/DOJ. The information is provided so that the DSS/DOJ may make it available to the Federal Magistrate Judge who conducts the initial proceedings under the Act. *See* ''Residence information,'' paragraph (b)(2) of this section.

(A) Notice of the temporary detention of any person for a violation of the Act shall be forwarded through command channels, without unnecessary delay, to the Combatant Commander, who shall advise the GC, DoD, as the representative of the Secretary of Defense, of all such detentions. At the discretion of the GC, DoD, other agencies and organizations (such as the Legal Counsel to the Chairman of the Joint Chiefs of Staff and Secretary of the Military Department that sponsored the person into the foreign country) shall be informed, as appropriate.

(B) Such notice shall include a summary of the charges, facts and circumstances surrounding the offenses, information regarding any applicable SOFA or other international agreements affecting jurisdiction in the case, and the reasons warranting temporary detention.

(iv) If military command authorities at the military installation outside the United States intend to request a person's detention by order of the Federal Magistrate Judge, the military representative assigned to the case shall gather the necessary information setting forth the reasons in support of a motion to be brought by the attorney representing the government at the initial proceeding conducted pursuant to section 3265 of the Act.

(v) This part is not intended to eliminate or reduce existing obligations or authorities to detain persons in foreign countries as required or permitted by agreements with host countries. *See* generally, *United States* v. *Murphy,* 18 M.J. 220 (CMA 1984).

(6) *Custody and transport of persons while in temporary detention.* (i) The Department of Defense may only take custody of and transport the person as specifically set forth in the Act. This is limited to delivery as soon as practicable to the custody of U.S. civilian law enforcement authorities for removal to the United States for judicial proceedings; delivery to appropriate authorities of the foreign country in which the person is alleged to have committed the violation of section 3261(a) of the Act in accordance with section 3263 of the Act; or, upon a determination by the Secretary of Defense, or the Secretary's designee, that military necessity requires it, removal to the nearest U.S. military installation outside the United States adequate to detain the person and to facilitate the initial appearance described in 3265(a) of the Act.

(ii) Responsibility for a detained person's local transportation, escort, and custody requirements remains with the command that placed the person in temporary detention for a violation of section 3261(a) of the Act. This responsibility includes:

(A) Attendance at official proceedings and other required health and welfare appointments (*e.g.*, appointments with counsel, medical and dental appointments, etc.).

(B) Delivery to host nation officials under section 3263 of the Act.

(C) Attendance at Initial Proceedings conducted under section 3265 of the Act.

(D) Delivery under the Act to the custody of U.S. civilian law enforcement authorities for removal to the United States.

(iii) A person who requires the continued exercise of custody and transportation to appointments and locations away from the detention facility, including delivery of the person to host nation officials under section 3263 of the Act, may be transferred under the custody of command authorities or those law enforcement officers authorized to make arrests in paragraphs (b)(4)(iv) and (b)(4)(v) of this section. Transportation of a detainee outside an installation shall be coordinated with the host nation's local law enforcement, as appropriate and in accordance with recognized practices.

(iv) Military authorities retain responsibility for the custody and transportation of a person arrested or charged with a violation of the Act who is to be removed from one military installation outside the United States to another military installation outside the United States, including when the person is transferred under the provisions of section 3264(b)(5) of the Act. Unless otherwise agreed to between the sending and receiving commands, it shall be the responsibility of the sending command to make arrangements for the person's transportation and custody during the transport or transfer to the receiving command.

(v) When the host nation has interposed no objections after becoming aware of the Act, as referenced in paragraph (d) of appendix A to this part, U.S. civilian law enforcement authorities shall be responsible for taking custody of a person arrested or charged with a violation of the Act and for the removal of that person to the United States for any pretrial or trial proceedings. DoD officials shall consult with the DSS/DOJ to determine which civilian law enforcement authority (*i.e.*, U.S. Marshals Service, Federal Bureau of Investigations, Drug Enforcement Agency, or other Federal agency) shall dispatch an officer to the overseas' detention facility to assume custody of the person for removal to the United States. Until custody of the person is delivered to such U.S. civilian law enforcement authorities, military authorities retain responsibility for the custody and transportation of the person arrested or charged with a violation of the Act, to include transportation within the host nation to help facilitate the removal of the person to the United States under the Act.

(7) *Release from temporary detention.* When a person subject to the Act has been placed in temporary detention, in the absence of a Criminal Complaint or Indictment pursuant to the Federal

Rules of Criminal Procedure, only the Commander who initially ordered detention, or a superior Commander, or a Federal Magistrate Judge, may order the release of the detained person. If a Criminal Complaint or Indictment exists, or if a Federal Magistrate Judge orders the person detained, only a Federal Magistrate Judge may order the release of the person detained. If a Federal Magistrate Judge orders the person temporarily detained to be released from detention, the Commander who ordered detention, or a superior Commander, shall cause the person to be released. When a person is released from detention under this provision, the Commander shall implement, to the extent practicable within the Commander's authority, any conditions on liberty directed in the Federal Magistrate Judge's order. When the commander who independently ordered the person's temporary detention without reliance on a Federal Magistrate Judge's order, or a superior commander, orders a person's release before a Federal Magistrate Judge is assigned to review the matter, the commander may, within the Commander's authority, place reasonable conditions upon the person's release from detention.

(i) A person's failure to obey the conditions placed on his or her release from detention, in addition to subjecting that person to the Commander's or Federal Magistrate Judge's order to be returned to detention, may subject the person to administrative procedures leading to a loss of command sponsorship to the foreign country, as well as the possibility of additional disciplinary or adverse action.

(ii) A copy of all orders issued by a Federal Magistrate Judge concerning initial proceedings, detention, conditions on liberty, and removal to the United States shall promptly be provided to the Commander of the Combatant Command concerned and the Commander of the detention facility at which the person is being held in temporary detention.

(8) *Delivery of persons to host nation authorities.* (i) Persons arrested may be delivered to the appropriate authorities of the foreign country in which the person is alleged to have violated section 3261(a) of the Act, when:

(A) Authorities of a foreign country request that the person be delivered for trial because the conduct is also a violation of that foreign country's laws, and

(B) Delivery of the person is authorized or required by treaty or another international agreement to which the United States is a party.

(ii) Coast Guard personnel authorized to make arrests pursuant to paragraph (b)(4)(v) of this section are also authorized to deliver persons to foreign country authorities, as provided in section 3263 of the Act.

(iii) Section 3263(b) of the Act calls upon the Secretary of Defense, in consultation with the Secretary of State, to determine which officials of a foreign country constitute appropriate authorities to which persons subject to the Act may be delivered. For purposes of the Act, those authorities are the same foreign country law enforcement authorities as are customarily involved in matters involving foreign criminal jurisdiction under an applicable SOFA or other international agreement or arrangement between the United States and the foreign country.

(iv) No action may be taken under this part with a view toward the prosecution of a person for a violation of the Act if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense(s), except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity). *See* section 3261(b) of the Act. Requests for an exception shall be written and forwarded to the combatant commander. The combatant commander shall forward the request to the GC, DoD, as representative for the Secretary of Defense, for review and transmittal to the Attorney General of the United States. At the discretion of the GC, DoD, other agencies and organizations (such as the Legal Counsel to the Chairman of the Joint Chiefs of Staff and the Secretary of the Military Department that sponsored the person into the foreign country) shall be informed, as appropriate.

(v) Except for persons to be delivered to a foreign country, and subject to the limitations of section 3264 of the Act and paragraph (e) of this section, persons arrested for conduct in violation of the Act shall, upon the issuance of a removal order by a Federal Magistrate Judge under section 3264(b) of the Act, be delivered, as soon as practicable, to the custody of U.S. civilian law enforcement authorities. *See* paragraph (b)(6)(iv) of this section.

(c) *Representation.* (1) *Civilian defense counsel.* (i) Civilian defense counsel representation shall not be at the expense of the Department of Defense or the Military Departments.

(ii) The Act contemplates that a person arrested or charged with a violation of the Act shall be represented by a civilian attorney licensed to practice law in the United States. However, it is also recognized that in several host nations where there has been a long-standing military presence, qualified civilian attorneys (including lawyers who are U.S. citizens) have established law practices in these host nations to assist assigned U.S. personnel and to represent service members in courts-martial, or before host nation courts. With the consent of the person arrested or charged with a violation of the Act who wishes to remain in the foreign country, these lawyers can provide adequate representation for the limited purpose of any initial proceedings required by the Act. When the person entitled to an attorney or requests counsel, staff judge advocates at such locations should assemble a list of local civilian attorneys for the person's consideration. The list shall contain a disclaimer stating that no endorsement by the United States government or the command is expressed or implied by the presence of an attorney's name on the list.

(A) To the extent practicable, military authorities shall establish procedures by which persons arrested or charged with a violation of the Act may seek the assistance of civilian defense counsel by telephone. Consultation with such civilian counsel shall be in private and protected by the attorney-client privilege.

(B) Civilian defense counsel, at no expense to the Department of Defense, shall be afforded the opportunity to participate personally in any initial proceedings required by the Act that are conducted outside the United States. When civilian defense counsel cannot reasonably arrange to be personally present for such representation, alternative arrangements shall be made for counsel's participation by telephone or by such other means that enables voice communication among the participants.

(C) When at least one participant cannot arrange to meet at the location outside the United States where initial proceedings required by the Act are to be conducted, whenever possible arrangements should be made to conduct the proceedings by video teleconference or similar means. Command video teleconference communication systems should be used for this purpose, if resources permit, and if such systems are not otherwise unavailable due to military mission requirements. When these capabilities are not reasonably available, the proceedings shall be conducted by telephone or such other means that enables voice communication among

the participants. *See* section 3265 of the Act.

(D) The provisions regarding the use of teleconference communication systems apply to any detention proceedings that are conducted outside the United States under section 3265(b) of the Act.

(E) Civilian defense counsel practicing in host nations do not gain Department of Defense sponsorship, nor any other diplomatic status, as a result of their role as defense counsel. To the extent practicable, notice to this effect shall be provided to the civilian defense counsel when the civilian defense counsel's identity is made known to appropriate military authorities.

(2) *Military defense counsel.* (i) Counsel representation also includes qualified military counsel, as defined in § 153.3, that the Judge Advocate General of the Military Department concerned determines is reasonably available for the purpose of providing limited representation at initial proceedings required by the Act and conducted outside the United States. By agreement with the Department of Homeland Security, Coast Guard commands and activities located outside the United States shall seek to establish local agreements with military commands for qualified military counsel from the Military Departments to provide similar limited representation in cases arising within the Coast Guard. The Secretaries of the Military Departments shall establish regulations governing representation by qualified military counsel. These regulations, at a minimum, shall require that the command's Staff Judge Advocate:

(ii) Prepare, update as necessary, and make available to a Federal Magistrate Judge upon request, a list of qualified military counsel who are determined to be available for the purpose of providing limited representation at initial proceedings.

(iii) Ensure that the person arrested or charged under the Act is informed that any qualified military counsel shall be made available only for the limited purpose of representing that person in any initial proceedings that are to be conducted outside the United States, and that such representation does not extend to further legal proceedings that may occur either in a foreign country or the United States. The person arrested or charged shall also be required, in writing, to acknowledge the limited scope of qualified military counsel's representation and therein waive that military counsel's further representation in any subsequent legal proceedings conducted within a foreign country or the United States. The ''Acknowledgement of Limited Representation,'' at appendix B to this part, may be used for this purpose. A copy of the ''Acknowledgement of Limited Representation'' shall be provided to the person arrested or charged under the Act, as well as to the qualified military counsel. The original acknowledgment shall be kept on file in the DCO's Office of the Staff Judge Advocate.

(iv) Provide available information that would assist the Federal Magistrate Judge make a determination that qualified civilian counsel are unavailable, and that the person arrested or charged under the Act is unable financially to retain civilian defense counsel, before a qualified military counsel who has been made available is assigned to provide limited representation. *See* Analysis and Discussion of section 3265(c), in the report accompanying the Act.

(3) *Union representation.* Law enforcement officials shall comply with applicable civilian employee rights and entitlements, if any, regarding collective bargaining unit representation during pretrial questioning and temporary detention procedures under this part.

(4) *Military representative.* (i) To assist law enforcement officers and the U.S. Attorney's representative assigned to a case, a judge advocate, legal officer, or civilian attorney-advisor may be appointed as a military representative to represent the interests of the United States. As appropriate, the military representative may be appointed as a Special Assistant U.S. Attorney. The military representative shall be responsible for assisting the command, law enforcement, and U.S. Attorney representatives during pretrial matters, initial proceedings, and other procedures required by the Act and this part. These responsibilities include assisting the U.S. Attorney representative determine whether continued detention is warranted, and to provide information to the presiding Federal Magistrate Judge considering the following:

(ii) If there is probable cause to believe that a violation of the Act has been committed and that the person arrested or charged has committed it.

(iii) If the person being temporarily detained should be kept in detention or released from detention, and, if released, whether any conditions practicable and reasonable under the circumstances, should be imposed.

(d) *Initial proceedings.* (1) A person arrested for or charged with a violation of the Act may be entitled to an initial appearance before a judge and/or a detention hearing (collectively, the ''initial proceedings''). The initial proceedings are intended to meet the requirements of the Federal Rules of Criminal Procedure. The initial proceedings are not required when the person under investigation for violating the Act has not been arrested or temporarily detained by U.S. military authorities, or the person's arrest or temporary detention by U.S. law enforcement authorities occurs after the person ceases to accompany or be employed by the Armed Forces outside the United States, or the arrest or detention takes place within the United States.

(2) The initial proceedings to be conducted pursuant to the Act and this part shall not be initiated for a person delivered to foreign country authorities and against whom the foreign country is prosecuting or has prosecuted the person for the conduct constituting such offense. Only when the Attorney General or Deputy Attorney General (or a person acting in either such capacity) has approved an exception that would allow for prosecution in the United States may initial proceedings under the Act be conducted, under these circumstances. Requests for approval of such an exception shall be forwarded through the combatant commander to the GC, DoD, in accordance with paragraph (b)(8)(iv) of this section.

(3) Initial proceedings required by the Act and this part shall be conducted, without unnecessary delay. In accordance with the U.S. Supreme Court decision in *County of Riverside* v. *McLaughlin*, 500 U.S. 44 (1991), the initial appearance shall be conducted within 48 hours of the arrest. The initial proceedings required by the Act shall be conducted when:

(i) The person arrested has not been delivered to foreign country authorities under the provisions of section 3263 of the Act; or

(ii) The foreign country authorities having custody of the person delivers the person to U.S. military authorities without first prosecuting the person for such conduct as an offense under the laws of that foreign country.

(4) A Federal Magistrate Judge shall preside over the initial proceedings that are required by the Act and this part. The proceedings should be conducted from the United States using video teleconference methods, if practicable, and with all parties to the proceedings participating. In the event that there is no video teleconference capability, or the video teleconference capability is unavailable due to military requirements or operations, the parties to the proceeding shall, at a minimum, be placed in contact by telephone.

(5) Initial proceedings conducted pursuant to the Act and this part shall include the requirement for the person's initial appearance under the Federal Rules of Criminal Procedure. The Federal Magistrate Judge shall determine whether probable cause exists to believe that an offense under section 3261(a) of the Act has been committed and that the identified person committed it. This determination is intended to meet the due process requirements to which the person is entitled, as determined by the U.S. Supreme Court in *Gerstein* v. *Pugh,* 420 U.S. 103 (1975).

(6) Initial proceedings shall also include a detention hearing where required under section 3142 of title 18, U.S.C. and the Federal Rules of Criminal Procedure. A detention hearing may be required when:

(i) The person arrested or charged with a violation of the Act has been placed in temporary detention and the intent is to request continued detention; or

(ii) The United States seeks to detain a person arrested or charged with a violation of the Act who has not previously been detained.

(7) A detention hearing shall be conducted by a Federal Magistrate Judge. When the person arrested or charged requests, the detention hearing be conducted while the person remains outside the United States, detention hearing shall be conducted by the same Federal Magistrate Judge presiding over the initial proceeding and shall be conducted by telephone or other means that allow for voice communication among the participants, including the person's defense counsel. If the person does not so request, or if the Federal Magistrate Judge so orders, the detention hearing shall be held in the United States after the removal of the person to the United States.

(8) In the event that the Federal Magistrate Judge orders the person's release prior to trial, and further directs the person's presence in the district in which the trial is to take place, the U.S. Attorney Office's representative responsible for prosecuting the case shall inform the military representative and the DCO's Office of the Staff Judge Advocate.

(9) Under circumstances where the person suspected of committing an offense in violation of the Act has never been detained or an initial proceeding conducted, the presumption is that a trial date shall be established at which the defendant would be ordered to appear. Such an order would constitute an order under section 3264(b)(4) of the Act that ''otherwise orders the person to be removed.'' The person's failure to appear as ordered shall be addressed by the Court as with any other failure to comply with a valid court order.

(10) The DCO's Office of the Staff Judge Advocate shall assist in arranging for the conduct of initial proceedings required by the Act and this part, and shall provide a military representative to assist the U.S. Attorney's Office representative in presenting the information for the Federal Magistrate Judge's review. The military representative shall also provide any administrative assistance the Federal Magistrate Judge requires at the location outside the United States where the proceedings shall be conducted.

(e) *Removal of persons to the United States or other countries.* (1) In accordance with the limitation established by section 3264 of the Act, military authorities shall not remove, to the United States or any other foreign country, a person suspected of violating section 3261(a) of the Act, except when:

(i) The person's removal is to another foreign country in which the person is believed to have committed a violation of section 3261(a) of the Act; or

(ii) The person is to be delivered, upon request, to authorities of a foreign country under section 3263 of the Act and paragraph (b)(8) of this section; or

(iii) The person is entitled to, and does not waive, a preliminary examination under Federal Rule of Criminal Procedure 5.1, in which case the person shall be removed to the U.S. for such examination; or

(iv) The person's removal is ordered by a Federal Magistrate Judge. *See* paragraph (e)(2) of this section; or

(v) The Secretary of Defense, or the Secretary's designee, directs the person be removed, as provided in section 3264(b)(5) of the Act and paragraph (e)(3) of this section.

(2) *Removal by order of a Federal Magistrate Judge.* Military authorities may remove a person suspected of violating section 3261(a) of the Act to the United States, when:

(i) A Federal Magistrate Judge orders that the person be removed to the United States to be present at a detention hearing; or

(ii) A Federal Magistrate Judge orders the detention of the person prior to trial (*See* section 3142(e) of title 18, U.S.C., in which case the person shall be promptly removed to the United States for such detention; or

(iii) A Federal Magistrate Judge otherwise orders the person be removed to the United States.

(3) *Removal by direction of the Secretary of Defense or designee.* The Secretary of Defense, or designee, may order a person's removal from a foreign country within the Combatant Command's geographic area of responsibility when, in his sole discretion, such removal is required by military necessity. *See* section 3264(b)(5) of the Act. Removal based on military necessity may be authorized in order to take into account any limiting factors that may result from military operations, as well as the capabilities and conditions associated with a specific location.

(i) When the Secretary of Defense, or designee, determines that a person arrested or charged with a violation of the Act should be removed from a foreign country, the person shall be removed to the nearest U.S. military installation outside the United States where the limiting conditions requiring such a removal no longer apply, and where there are available facilities and adequate resources to temporarily detain the person and conduct the initial proceedings required by the Act and this part.

(ii) The relocation of a person under this paragraph does not authorize the further removal of the person to the United States, unless that further removal is authorized by an order issued by a Federal Magistrate Judge under paragraph (e)(2) of this section.

(iii) *Delegation.* The Commander of a Combatant Command, and the Commander's principal assistant, are delegated authority to make the determination, based on the criteria stated in paragraph (e)(3) of this section, that a person arrested or charged with a violation of the Act shall be removed from a foreign country under section 3264(b)(5) of the Act and this part. Further delegation is authorized, but the delegation of authority is limited to a subordinate commander within the command who is designated as a general court-martial convening authority under the UCMJ.

(4) A person who is removed to the United States under the provisions of the Act and this part and who is thereafter released from detention, and otherwise at liberty to return to the location outside the United States from which he or she was removed, shall be subject to any requirements imposed by a Federal District Court of competent jurisdiction.

(5) Where a person has been removed to the United States for a detention hearing or other judicial proceeding and a Federal Magistrate Judge orders the person's release and permits the person to return to the overseas location, the Department of Defense (including the Military Department originally sponsoring the person to be employed

or to accompany the Armed Forces outside the United States) shall not be responsible for the expenses associated with the return of the person to the overseas location, or the person's subsequent return travel to the United States for further court proceedings that may be required.

(f) This part, including its appendices, is intended exclusively for the guidance of military personnel and civilian employees of the Department of Defense, and of the United States Coast Guard by agreement with the Department of Homeland Security. Nothing contained in this part creates or extends any right, privilege, or benefit to any person or entity. *See United States* v. *Caceres,* 440 U.S. 741 (1979).

Appendix A to Part 153—Guidelines

(a) Civilians employed by the Armed Forces outside the United States who commit felony offenses while outside the U.S. are subject to U.S. criminal jurisdiction under the Act, and shall be held accountable for their actions, as appropriate.

(b) Civilians accompanying the Armed Forces outside the United States who commit felony offenses while outside the U.S. are subject to U.S. criminal jurisdiction under the Act, and shall be held accountable for their actions, as appropriate.

(c) Former military members who commit felony offenses while serving as a member of the Armed Forces outside the U.S., but who ceased to be subject to UCMJ court-martial jurisdiction without having been tried by court-martial for such offenses, are subject to U.S. criminal jurisdiction under the Act and shall be held accountable for their actions, as appropriate.

(d) The procedures of this part and DoD actions to implement the Act shall comply with applicable international law, Status of Forces Agreements, and other international agreements affecting relationships and activities between the respective host nation countries and the U.S. Armed Forces. These procedures may be employed outside the United States only if the foreign country concerned has been briefed or is otherwise aware of the Act and has not interposed an objection to the application of these procedures. Such awareness may come in various forms, including but not limited to Status of Forces Agreements, Diplomatic Notes, Mutual Legal Assistance Treaties, or case-by-case arrangements, agreements, or understandings with local host nation officials.

(e) Consistent with the long-standing policy of maximizing U.S. jurisdiction over its citizens, the Act and this part provide a mechanism for furthering this objective by closing a jurisdictional gap in U.S. law and thereby permitting the criminal prosecution of covered persons for offenses committed outside the United States. In so doing, the Act and this part provide, in appropriate cases, an alternative to the host nation's exercise of its criminal jurisdiction over conduct that is both a violation of the laws of the host nation and the U.S.

(f) In addition to the limitations imposed upon prosecutions by section 3261(b) of the Act, the Act and these procedures should be reserved generally for serious misconduct for which administrative or disciplinary remedies are determined to be inadequate or inappropriate. Because of the practical constraints and limitations on the resources available to bring these cases to successful prosecution in the United States, initiation of action under this part would not generally be warranted unless serious misconduct was involved. Examples of serious misconduct might include:

(1) Frauds against the Government or significant attempted or actual theft, damage or destruction of Government property;

(2) Death or serious injury to, attempted injury or threatened injury to, or sexual assault of a national of the United States, or any other person employed by or accompanying the Armed Forces outside the United States, as defined in §153.3, or

(3) Conduct that affected adversely or threatened to affect adversely the readiness, morale, discipline or health of the Armed Forces or its members.

Appendix B to Part 153—Acknowledgment of Limited Legal Representation (Sample)

1. I, _____, have been named as a suspect or defendant in a matter to which I have been advised is subject to the jurisdiction of the Military Extraterritorial Jurisdiction Act of 2000 (section 3261, *et seq.,* of title 18, United States Code.); hereinafter referred to as ''the Act''). I have also been informed that certain initial proceedings under 18 U.S.C. 3265 may be required under this Act, for which I am entitled to be represented by legal counsel.
2. I acknowledge and understand that the appointment of military counsel for the limited purpose of legal representation in proceedings conducted pursuant to the Act is dependent upon my being unable to retain civilian defense counsel representation for such proceedings, due to my indigent status, and that qualified military defense counsel has been made available.
3. Pursuant to the Act, _____, a Federal Magistrate Judge, has issued the attached Order and has directed that military counsel be made available:
   ____ For the limited purpose of representing me at an initial proceeding to be conducted outside the United States pursuant to 18 U.S.C. 3265,
   ____For the limited purpose of representing me in an initial detention hearing to be conducted outside the United States pursuant to 18 U.S.C. 3265(b),
4. _____, military counsel, has been made available in accordance with Department of Defense Instruction 5525.bb, and as directed by the attached Order of a Federal Magistrate Judge.
5. I (do) (do not) wish to be represented by _____, military counsel _____ (initials).
6. I understand that the legal representation of _____, military counsel, is limited to:
   a. Representation at the initial proceedings conducted outside the United States pursuant to 18 U.S.C. 3265. _____ (Initials)
   b. The initial detention hearing to be conducted outside the United States pursuant to the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261, *et seq.*). _____ (Initials)
   c. Other proceedings (Specify): _____. _____ (Initials)

_____
(Signature of Person To Be Represented by Military Counsel)

_____
(Signature of Witness)*

Attachment:
Federal Magistrate Judge Order

(***Note:** The witness must be someone other than the defense counsel to be made available for this limited legal representation.)

Dated: January 16, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 72, 75, and 96

[FRL–7617–5]

Public Hearings for Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule) and Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearings.

SUMMARY: The EPA is announcing three public hearings to be held jointly for two related proposals that were published in the **Federal Register** on January 30, 2004. The hearings are for the proposed ''Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule)'' and the ''Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units,'' which is also known as the proposed Utility Mercury Reductions Rule. The hearings will be held concurrently in Chicago, Illinois; Philadelphia, Pennsylvania;

and Research Triangle Park, North Carolina. Each hearing will last two days and is scheduled for February 25 and 26, 2004. Persons wishing to present oral testimony for one or both proposals may speak on either day. Details of the facility sites for the hearings and the starting and ending times will be provided on the web sites for the rulemakings identified under **ADDRESSES** as soon as the information is available.

The EPA's proposed Interstate Air Quality Rule would reduce emissions of sulfur dioxide and nitrogen dioxides in 29 eastern States and the District of Columbia that are significantly contributing to fine particulate matter and 8-hour ozone nonattainment problems in downwind States. Each State would be required to adopt control measures to meet specific statewide emission reduction requirements. The EPA believes that the most cost-effective way for States to achieve the required reductions would be to regulate utilities under a cap-and-trade program similar to EPA's highly successful Acid Rain Program. The proposed Utility Mercury Reductions Rule provides options that would reduce mercury emissions and would set a mandatory, declining cap on the total mercury emissions allowed from utilities nationwide. The proposal also would reduce nickel emissions from utilities. The EPA is coordinating these rulemakings to allow the emissions reductions to be achieved in the most cost-effective manner by sources affected by both actions.

DATES: The public hearings will be held on February 25 and 26, 2004. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearings.

ADDRESSES: The hearings will be held concurrently in Chicago, Illinois; Philadelphia, Pennsylvania; and Research Triangle Park, North Carolina.

Written comments on these proposed rules may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the proposals for the addresses and detailed instructions.

Documents relevant to this action are available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW, Room B102, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through EPA's electronic Docket system at *http://www.epa.gov/edocket.*

The EPA Web sites for the rulemakings, which will include information about the public hearings, are at *http://www.epa.gov/interstateairquality* and *http://www.epa.gov/mercury.*

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearings or have questions concerning the public hearings, please contact JoAnn Allman at the address given below under **SUPPLEMENTARY INFORMATION.** Questions concerning the Interstate Air Quality Rule should be addressed to Scott Mathias, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C539–01), Research Triangle Park, NC 27711, telephone number (919) 541–5310, e-mail at *mathias.scott@epa.gov.* Questions concerning the Utility Mercury Reductions Rule should be addressed to William Maxwell, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Combustion Group (C439–01), Research Triangle Park, NC 27711, telephone number (919) 541–5430, fax number (919) 541–5450, e-mail at *maxwell.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Hearings

The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be postmarked by the last day of the comment period, as specified in the proposals.

If you would like to present oral testimony at the hearings, please notify JoAnn Allman, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail allman.joann@epa.gov no later than February 20, 2004. She will provide you with a specific time and date to speak. Oral testimony will be limited to 10 minutes for each commenter to address either or both proposals. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations unless we receive special requests in advance. Commenters should notify JoAnn Allman if they will need specific equipment. The hearing schedules, including lists of speakers, will be posted on EPA's Web pages for the proposals at *http://www.epa.gov/interstateairquality* and *http://www.epa.gov/mercury* prior to the hearing. Verbatim transcripts of the hearings and written statements will be included in the rulemaking dockets.

How Can I Get Copies of This Document and Other Related Information?

The EPA has established the official public docket for the Interstate Air Quality Rule under Docket ID No. OAR–2003–0053. The EPA has established the official public docket for the Utility Mercury Reductions Rule under Docket ID No. OAR–2002–0056. The EPA has also developed web sites for the proposals at the addresses given above. Please refer to the proposals, which were published in the **Federal Register** on January 30, 2004, for detailed information on accessing information related to the proposals.

Dated: January 28, 2004.

Anna B. Duncan,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 04–2152 Filed 1–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–257–200402(b); FRL–7616–1]

Approval and Promulgation of Implementation Plans, Tennessee: Knox County Maintenance Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Tennessee State Implementation Plan (SIP) submitted by the Tennessee Department of Environment and Conservation (TDEC) on August 20, 2003. This SIP revision satisfies the requirement of the Clean Air Act as amended in 1990 (CAA) for the 10-year update of the Knox County 1-hour ozone maintenance plan. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant material and adverse comments are received in

response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before March 3, 2004.

ADDRESSES: Comments may be submitted by mail to: Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** (sections I.B.1 through 3.) which is published in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Ms. Hoffman can also be reached via electronic mail at *hoffman.annemarie@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 20, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–1971 Filed 1–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2004–NH–0001; A–1–FRL–7616–9]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Control of Gasoline Fuel Parameters; Removal of the Reformulated Gasoline Program From Four Counties in New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on October 31, 2002 and October 3, 2003, establishing fuel emissions performance requirements for gasoline distributed in southern New Hampshire which includes Hillsborough, Merrimack, Rockingham, and Strafford Counties. New Hampshire has developed these fuel requirements to reduce emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve New Hampshire's fuel requirements into the New Hampshire SIP because EPA has found that the requirements are necessary for southern New Hampshire to achieve the national ambient air quality standard (NAAQS) for ozone. The intended effect of this action is to propose approval of New Hampshire's request to control fuel emissions performance requirements in these four southern counties. In addition, should EPA approve this action, reformulated gasoline (RFG) will no longer be required in this area 90 days after final approval in accordance with the procedures set forth in 40 CFR Section 80.72. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before March 3, 2004.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in Part (I)(B)(1)(i) through (iv) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1045, *judge.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under Regional Material EDocket Number R01–OAR–2004–NH–0001. The official public file 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 rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal Holidays.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's Regional Material EDocket (RME) system, a part of EPA's electronic docket and comment system. You may access RME at *http://docket.epa.gov/rmepub/index.jsp* to review associated documents and submit comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number.

You may also access this **Federal Register** document electronically through the Regulations.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register,** the Government's legal newspaper, and are open for comment.

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 at the EPA Regional Office, 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 the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

3. *Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking R01–OAR–2004–NH–0001'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in Regional Material EDocket. 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. *Regional Material EDocket (RME).* Your use of EPA's Regional Material EDocket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to RME at *http://docket.epa.gov/rmepub/index.jsp,* and follow the online instructions for submitting comments. Once in the RME system, select ''quick search,'' and then key in RME Docket ID Number R01–OAR–2004–NH–0001. 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 *conroy.dave@epa.gov,* please include the text ''Public comment on proposed rulemaking R01–OAR–2004–NH–0001'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

iii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button ''TO SEARCH FOR REGULATIONS CLICK HERE'', and select Environmental Protection Agency as Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. 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.

iv. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Please include the text ''Public comment on proposed rulemaking R01–OAR–2004–NH–0001'' in the subject line on the first page of your comment

3. *By Hand Delivery or Courier.* Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of EcosystemProtection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal Holidays..

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. 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 regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Rulemaking Information

Organization of this document. The following outline is provided to aid in locating information in this preamble.

The information in this section is organized as follows:

Description of the SIP Revision and EPA's Action

A. What Is the Background for This Action?
B. What Fuel Control Requirements Are Being Established?
C. What Are the Relevant EPA Requirements?
D. How Has the State Met the Test Under Section 211(c)(4)(C)?
E. What About Federal Reformulated Gasoline?
F. Why Is EPA Taking This Action?

Description of the SIP Revision and EPA's Action

A. What Is the Background for This Action?

Under the Clean Air Act Amendments of 1990, southern New Hampshire was divided into three separate ozone nonattainment areas: the New Hampshire portion of the Boston area which is comprised of portions of Hillsborough and Rockingham counties; the Portsmouth-Dover-Rochester area which includes portions of Rockingham and all of Strafford county; and the Manchester area, which includes all of Merrimack and the remaining portions of Hillsborough and Rockingham counties. Each of these areas was designated nonattainment for ozone.

To bring these areas into attainment, the State adopted and implemented a broad range of ozone control measures including stage II vapor recovery on gasoline retail facilities, numerous stationary and area source VOC controls, NO_X controls on stationary sources, and a vehicle inspection and maintenance (I/M) program. In addition, the State participated in the federal RFG program in the four southern counties in New Hampshire since January 1, 1995. This strategy and other measures resulted in significant air quality improvements in southern New Hampshire. Nevertheless, in light of ongoing concerns regarding the oxygenate requirement in RFG, specifically the use of methyl tertiary butyl ether (MTBE), the Governor instructed the Department of Environmental Services (DES) to opt-out of the federal RFG program.

New Hampshire had voluntarily chosen to participate in the reformulated gasoline program. Ultimately, EPA approved RFG as one of the control strategies that New Hampshire needs to attain the national ambient air quality standard (NAAQS) for ozone. As such, RFG is now approved as part of the State Implementation Plan (SIP). New Hampshire is now seeking to amend the SIP to replace RFG with oxygen flexible reformulated gasoline (OFRFG).

By this rule, the OFRFG rule, New Hampshire is ensuring that it replaces the VOC and NO_X benefits that RFG is required to achieve. These emission reductions are critical to New Hampshire's attainment of the 1-hour ozone standard, and are critical strategies that are part of the State's approved rate of progress plans.

B. What Fuel Control Requirements Are Being Established?

New Hampshire has adopted a rule PART Env–A 1611 entitled ''Oxygen Flexible Reformulated Gasoline'' effective May 2, 2002. That rule was established to mimic the requirements of the federal RFG. It sets forth performance standards for NO_X (3.0% reduction) and VOC (23.4% reduction) that each gallon of fuel sold in New Hampshire will be required to meet in the summertime. The rule also establishes other performance standards for wintertime NO_X, air toxics, benzene and heavy metals but those portions of the rule were not submitted to EPA for approval. Importantly, this rule does not establish a minimum oxygen requirement for gasoline to contain in New Hampshire. New Hampshire has not set an oxygen minimum in order to encourage fuel with less oxygenates, most notably MTBE, to be sold in the State. Compliance with the requirements of this rule will be determined based on the phase II complex model in 40 CFR 80.45, just as is done with federal RFG. Gasoline certified as Phase II federal RFG will be considered a compliant fuel. Because NO_X and VOC are necessary components in the production of ground level ozone in hot summer months, reduction of these pollutants will help areas achieve the NAAQS for ozone and thereby produce benefits for human health and the environment.

C. What Are the Relevant Clean Air Act Requirements?

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions approving certain state fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state regulations respecting a fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to the federal control. Section 211(c)(4)(C) provides an exception to this preemption if EPA approves the state requirements in a SIP. Section 211(c)(4)(C) states that the Administrator may approve an otherwise preempted state fuel standards in a SIP:

Only if [s]he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable.

EPA interprets the reference to ''other measures'' that must be evaluated as generally not encompassing other state fuel measures. The Agency believes that the Act does not call for a comparison between state fuels measures to determine which measures are unreasonable or impracticable, but rather section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available practicable and reasonable nonfuels measures. Thus, in demonstrating that other measures are unreasonable or impracticable, a state need not address the reasonableness or practicability of other state fuel measures.

EPA's August, 1997 ''Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPS'' gives further guidance on what EPA is likely to consider in making a finding of necessity. Specifically, the guidance recommends breaking down the necessity demonstration into four steps: identify the quantity of reductions needed to reach attainment; identify other possible control measures and the quantity of reductions each measure would achieve; explain in detail which of those identified control measures are considered unreasonable or impracticable; and show that even with the implementation of all reasonable and practicable measures, that the state would need additional emission reductions for timely attainment, and that the state fuel measure would supply some or all of such additional reductions.

EPA has evaluated the submitted SIP revision and has determined that it is

consistent with the requirements of the CAA, EPA regulations, and conforms to EPA's completeness criteria in 40 CFR part 51, Appendix V. Further, EPA has looked at New Hampshire's demonstration that this fuel control program is necessary in accordance with 211(c)(4)(C) and agrees with the State's conclusion that a fuel measure is needed to achieve the ozone NAAQS.

The SIP submittal contains: (1) New Hampshire rule, PART Env–A 1611 entitled ''Oxygen Flexible Reformulated Gasoline'' effective May 2, 2002; (2) documentation of the public notice dated January 14, 2002, and evidence of the public hearing regarding the OFRFG which occurred on February 20, 2002; (3) evidence of State legal authority; and (4) an application for waiver of federal preemption initially dated December 7, 2001 and updated October 3, 2003. Information regarding prohibitions on the sale of non-conforming gasoline, test procedures and sampling for the SIP revision can be found in PART Env–A 1611 of the New Hampshire Department of Environmental Services regulations, and New Hampshire statutes on enforcement and penalties can be found at New Hampshire Revised Statutes Annotated (R.S.A.) Chapter 125–C:6 and Chapter 125–C:15. Based on this and a detailed enforcement strategy in the October 31, 2002 submittal, EPA has concluded that these provisions confer on the State the requisite authority to enforce compliance with the NO_X and VOC control requirements in their OFRFG rule.

D. How Has the State Met the Test Under Section 211(c)(4)(C)?

CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a state from prescribing or attempting to enforce any control or prohibition respecting any characteristic or component of a fuel or fuel additive for the purposes of motor vehicle emission control if the Administrator has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component of the fuel or fuel additive, unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

EPA has adopted federal controls for RFG under section 211(k). These regulations are found in 40 CFR 80.40–80.130. The specific standards being approved here, summertime VOC and NO_X controls, are identified in 40 CFR 80.41. Four counties in New Hampshire are presently required under the federal rule to use federal RFG. *See* 40 CFR 80.70(j)(8).

A state may prescribe and enforce an otherwise preempted fuel control requirement only if the EPA approves the control into the state's SIP. In order to approve a preempted state fuel control into a SIP, EPA must find that the state control is necessary to achieve a NAAQS because no other reasonable or practicable measures exist to bring about timely attainment. Thus, to determine whether New Hampshire's OFRFG rule is necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable measures available to produce the emission reductions needed to achieve the 1-hour ozone NAAQS. In addition, while EPA has not yet acted on the recommendation, in July 2003, the Governor of New Hampshire did make a recommendation that much of this area should be designated nonattainment of EPA's 8-hour ozone standard.

With the State's decision to opt-out of the federal RFG program, the VOC and NO_X reductions achieved by this program need to be replaced to ensure that the southern New Hampshire areas meet the 1-hour ozone standard. New Hampshire nonattainment areas have measured air quality in recent years exceeding the 1-hour and 8-hour ozone standard. Given this situation, it is clear that the reductions provided by participation of the four counties of southern New Hampshire in the federal RFG program are critical to achievement of the ozone NAAQS.

For purposes of demonstrating necessity, New Hampshire has determined the level of reductions achieved from the phase 2 RFG VOC and NO_X reductions required in the various SIP submittals made by New Hampshire for its 15 percent rate of progress plan, its subsequent 9 percent rate of progress plan and its attainment demonstration as estimates of the emission reductions that are necessary for southern New Hampshire to achieve the ozone NAAQS. Based on MOBILE6, EPA's mobile sources emission estimation tool, New Hampshire believes that RFG is responsible for 5.5 tons per summer day of VOC reductions for the summer of 2004. New Hampshire's OFRFG rule, because it requires the same ''performance standards'' to be met, will achieve the same level of emission reductions of both VOC and NO_X.

With this estimate of the reductions necessary to achieve the ozone NAAQS, the State evaluated an extensive list of non-fuel alternative controls to determine if reasonable and practicable controls could be implemented to provide sufficient reductions in a timely manner. The State analyzed potential control measures by reviewing previously prepared emission inventories to determine if other non-fuel control measures could be adopted and used to replace the VOC reductions that RFG had achieved. The State reviewed all the source categories that comprised the emission inventory, and evaluated control measures on each source category. For a variety of reasons, most control measures were either already implemented, or were found to be unreasonable or impracticable for achieving reductions in a timely manner. (*See* October 3, 2003 submittal from the State of New Hampshire.) In addition, New Hampshire recognized that OFRFG would yield some additional NO_X emission reductions which would replace the emission reductions that federal RFG was required to achieve.

As one example, the State evaluated the possibility of further controlling gasoline refueling, or stage II, emissions. The State does have a stage II vapor recovery program for facilities with an annual throughput greater than 420,000 gallons per year, but requiring even smaller facilities (*i.e.*, gas stations) to comply would yield 0.038 tons per summer weekday (tpswd). The State concluded that a regulatory change would be necessary to further control emissions from this source category. In addition, such controls could not be adopted and implemented as quickly as the fuel control. Further, the actual installation of these controls would take additional time, which would not be reasonable or practicable because the State needed to replace the reductions as soon as possible. For these reasons and the small amount of available reductions, the State concluded that further stage II controls were not a practical measure for achieving VOC emission reductions. The State also considered the effect of further improving its vehicle inspection and maintenance program through the implementation of OBD2. This would yield an additional 0.64 tpswd. While this program may indeed be implemented by the summer of 2004, it will not replace the need for further controls. Other control measures were similarly evaluated, and determined to be either technically impossible or unreasonable and impracticable, or in a longer time frame from when the State needed to secure the replacement emission reductions. The State's analysis did not identify any non-fuel alternative controls that could conceivably be implemented by the summer of 2004—the earliest time frame

for EPA approval of OFRFG. (*See* October 3, 2003 State submittal.) Because they found no reasonable or practicable non-fuel control measures, additional reductions are necessary.

New Hampshire's OFRFG rule will achieve approximately 5.5 tpd of VOC reductions and some NO_X reductions beginning the first summer it is implemented, and is designed to replace the emission reductions required to be achieved by federal RFG. EPA believes these emission reductions are necessary to achieve the applicable ozone NAAQS in southern New Hampshire. EPA is basing today's action on the information available to the Agency at this time, which indicates that adequate reasonable and practicable non-fuel measures are not available to the State that would achieve these needed emission reductions, and protect New Hampshire's air quality in a timely manner. Hence, EPA is finding that these fuel standards are necessary for attainment of the applicable ozone NAAQS, and EPA is proposing to approve them as a revision to the New Hampshire SIP.

E. What About Federal Reformulated Gasoline?

As discussed earlier, New Hampshire has adopted OFRFG to replace the emission reductions from federal RFG-from which the State has petitioned to withdraw. EPA's decision to grant or deny an opt-out request, based on whether or not a state has satisfied the substantive opt-out requirements under 40 CFR 80.72, need not be made through notice and comment rulemaking. *See* 61 FR 35673 at 35675 (July 8, 1996). EPA established a petition process to allow case-by-case consideration of individual state requests to opt-out of the federal RFG program.[1] The Opt-out Rule establishes specific requirements regarding what information a State must submit in connection with an opt-out petition. These regulatory provisions also address when a state's petition is complete and the appropriate transition time for opting out. EPA has applied these criteria. If EPA approves this SIP revision as a final action, EPA intends to also approve New Hampshire's petition for withdrawal from the RFG program. Consistent with EPA's Opt-out Rule (*see* 40 CFR 80.72(c)(5)), the opt-out would become effective 90 days from the effective date of the final rulemaking for this SIP revision. The Opt-out Rule also directs EPA to publish a notice in the **Federal Register** announcing the approval of any opt-out petition and the effective date for removal of the state from the RFG program.

New Hampshire had participated voluntarily in the federal RFG program since it began in January 1995. By letter dated April 16, 2001, the Governor of New Hampshire announced the state's intent to opt-out, and indicated that the addition information and material necessary by EPA's rule would be forthcoming in future submittals from the State. The final information needed by EPA in order to proceed with this rulemaking was submitted by New Hampshire DES on October 3, 2003.

F. Why Is EPA Taking This Action?

EPA is proposing to approve a SIP revision at the request of the New Hampshire DES. This rule was adopted by the State effective May 2, 2002. To ensure that it secures the needed approval under section 211(c)(4)(C) of the Clean Air Act, New Hampshire submitted this action for EPA approval, to make it part of the SIP, and to complete the submission of material needed for opt-out of the RFG program.

III. Proposed Action

EPA is proposing to approve a SIP revision submitted by the State of New Hampshire on October 31, 2002 and October 3, 2003, establishing fuel emission control requirements for gasoline distributed in southern New Hampshire which includes Hillsborough, Merrimack, Rockingham and Strafford Counties. New Hampshire has a adopted a rule PART Env-A 1611 entitled ''Oxygen Flexible Reformulated Gasoline'' effective May 2, 2002. That rule was established to mimic the requirements of the federal RFG. It sets forth performance standards for NO_X (3.0% reduction) and VOC (23.4% reduction) that each gallon of fuel sold in New Hampshire will be required to meet in the summertime. The rule also establishes other performance standards for wintertime NO_X, air toxics, benzene and heavy metals but those portions of the rule were not submitted to EPA for approval. EPA is proposing to approve New Hampshire's fuel requirements into the SIP because EPA has found that the requirements are necessary for southern New Hampshire to achieve the national ambient air quality standard for ozone.

IV. What Are the Administrative Requirements

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

[1] Pursuant to authority under sections 211(c) and (k) and 301(a) of the Clean Air Act, EPA promulgated regulations to provide criteria and general procedures for states to opt-out of the RFG program where the state had previously voluntarily opted into the program. The regulations were initially adopted on July 8, 1996 (61 FR 35673); and were revised on October 20, 1997 (62 FR 54552).

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 22, 2004.

Robert W. Varney,

Regional Administrator, EPA-New England.

[FR Doc. 04–2067 Filed 1–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH158–1b; FRL–7616–5]

Redesignation and Approval of Ohio Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to redesignate Lucas County, Ohio, to an attainment area for sulfur dioxide (SO_2). EPA further proposes to approve Ohio's plan for continuing to attain the SO_2 standards. Finally, EPA proposes to approve State rule limits for two sources that are equivalent to the current limits for these sources.

DATES: Written comments on this proposed rule must arrive on or before March 3, 2004.

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

Comments may also be submitted electronically, or through hand delivery/courier. Commenters are advised to review the information and follow the instructions for submitting comments as described in part (I)(B) of the **SUPPLEMENTARY INFORMATION** section of the companion direct final rule published in the rules section of this **Federal Register**.

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

FOR FURTHER INFORMATION CONTACT: John Summerhays, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067. *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovermental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 20, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 04–1967 Filed 1–30–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25, 74, and 78

[ET Docket No. 03–254; FCC 03–318]

Coordination Between the Non-Geostationary and Geostationary Satellite Orbit

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to modify our frequency coordination rules to promote sharing between non-geostationary satellite orbit (NGSO) and geostationary satellite orbit (GSO) fixed-satellite service (FSS) operations and various terrestrial services operating in several frequency bands. We undertake this proceeding to facilitate the introduction of new satellite and terrestrial services while promoting interference protection among the various users in these bands.

DATES: Comments must be filed on or before March 3, 2004, and reply comments must be filed on or before March 18, 2004.

FOR FURTHER INFORMATION CONTACT: Ted Ryder, Office of Engineering and Technology, (202) 418–2803, e-mail: *tryder@fcc.gov,* or James Miller, (202) 418–7351 TTY (202) 418–2989, e-mail: *jjmiller@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* ET Docket No. 03–254, FCC 03–318, adopted December 15, 2003 and released December 23, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 3, 2004, and reply comments on or before March 18, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, D.C. 20554.

Summary of Notice of Proposed Rulemaking

1. The Notice of Proposed Rulemaking (NPRM) proposes to modify the Commission's frequency coordination rules to promote sharing between non-geostationary satellite orbit (NGSO) and geostationary satellite orbit (GSO) fixed-satellite service (FSS) operations and various terrestrial services operating in several frequency bands. Specifically, we consider a joint proposal by SkyBridge L.L.C. and the Fixed Wireless Communications Coalition (Skybridge/FWCC Growth Zone Proposal) to supplement our existing coordination procedures to promote sharing between new NGSO FSS space-to-Earth (downlink) operations and existing Fixed Service (FS) operations in the 10.7–11.7 GHz (10 GHz) band. We also set forth proposals for amending our frequency coordination rules to address situations where NGSO FSS and GSO FSS operations share spectrum with terrestrial operations in the FS, Broadcast Auxiliary Service (BAS) and Cable Television Relay Service (CARS) in various bands. Specifically, we:

- Propose to apply the principles of the Skybridge/FWCC Growth Zone Proposal to our coordination rules for NGSO FSS downlink operations sharing with FS operations in the 10 GHz band;
- Propose to apply the existing parts 25 and 101 coordination rules for coordination of new FSS (both NGSO and GSO) earth stations with mobile BAS/CARS operations in the 6875–7075 MHz (7 GHz) and 12750–13250 MHz (13 GHz) bands, and consider whether any additions or modifications to the rules are needed to address the operating characteristics of mobile services;
- Propose to allow either the parts 74 and 78 informal *ad hoc* coordination rules or the part 101 coordination rules to be used for the coordination of mobile BAS/CARS operations with FSS (both NGSO and GSO) earth stations, in the 7 GHz and 13 GHz bands, and consider whether any additions or modifications of these rules are needed; and,
- Propose to apply the existing parts 25 and 101 coordination rules for sharing between new NGSO FSS earth stations and fixed BAS/CARS operations in the 7 GHz and 13 GHz bands.

We undertake this proceeding to facilitate the introduction of new satellite and terrestrial services while promoting interference protection among the various users in these bands.

A. Coordination Between NGSO FSS and FS Operations at 10 GHz

2. *Proposal.* We tentatively conclude that our frequency coordination procedures should be modified to include the terms as we propose to modify them, below, of the Skybridge/FWCC Growth Zone Proposal for NGSO FSS gateway earth stations coordinating with the FS in the 10 GHz band. We believe that modifying our coordination requirements in this way will ensure that the use of the 10 GHz band by FS is not significantly hindered by the introduction of NGSO FSS gateway operations and that NGSO FSS operators will have more flexibility in deciding where to locate gateway earth stations. We note that the 10 GHz band has been targeted as an important alternative spectrum for FS operations being relocated from other bands. FS use in this band has seen continued growth. We do not think that the proposed coordination approach will significantly hinder NGSO FSS operations. The areas qualifying for Growth Zone treatment would be limited and, by their design and purpose, the number of NGSO FSS gateway earth stations should be small and have sufficient deployment flexibility. Finally, we believe that the coordination obligations put forth by Skybridge/FWCC are reasonable, and note that they would only apply if an NGSO FSS gateway earth station licensee determines that deployment within a Growth Zone is necessary. We request comment on our tentative conclusions regarding the effectiveness and benefits of the Skybridge/FWCC Growth Zone Proposal and whether FS expansion can be accommodated under this approach.

3. We note that the Skybridge/FWCC Growth Zone Proposal reflects a compromise reached by two significant parties in this proceeding, but it is prudent to address all of the various interests in the band. Therefore, we intend to explore alternatives to some of the procedures in the SkyBridge/FWCC Growth Zone Proposal and seek comment on them. First, we propose to adopt the qualification criteria in the SkyBridge/FWCC Growth Zone definition of any county in which at least 30 FS frequencies are licensed to transmit in the 10.7–11.7 GHz band. We acknowledge the advantages of using counties as Growth Zone boundaries in that they are well defined. The use of counties would also be administratively convenient, since this information is readily available in our license and other coordination databases. Further, a minimum fixed number of FS operations (30 FS transmit frequencies per county) would provide an easy and definitive method of determining when a county would qualify as a Growth Zone. Nevertheless, this approach does not account for varying county size and the fact that 30 licensed FS transmit frequencies could be on a single FS path or 30 different FS paths. This could be a problem in that large counties with low FS path densities would qualify as Growth Zones and smaller counties with higher FS path densities, but not 30 frequencies, would not qualify as Growth Zones. Therefore, we seek comment on this proposal and on any alternatives that might normalize the qualification factors for Growth Zones or otherwise account for varying county sizes and deployment scenarios.

4. Rather than propose the Skybridge/FWCC suggestion that the Commission publish a public notice every 6 months with a list of counties that qualify as Growth Zones, we propose to make the determination of whether an area qualifies as a Growth Zone a case-by-case function of the frequency coordination process. We find that making and publishing Growth Zone determinations every six months is unnecessary because this information can easily be handled as part of the coordination process for a new NGSO FSS gateway earth station. This approach would also provide ''near real-time'' currency to the process. We seek comment on this proposal and any alternatives.

5. We also propose to adopt the conditions (*see* (a) through (e) in paragraph 9 in the NPRM, on NGSO FSS deployment set forth in the SkyBridge/FWCC Growth Zone Proposal. These conditions would ensure: (1) That the coordination process protects the potential for FS growth throughout the allocated band, even though FS licensees would continue to be authorized for specific frequencies on an as needed basis; (2) that NGSO FSS licensees accepting a certain level of interference along a given azimuth from incumbent FS licensees will accept the same level of impact from future FS applicants; and (3) that coordination only considers the particular technical characteristics of the NGSO FSS gateway earth station being deployed without considering ''look angles'' to the satellites that will not be used. We seek comment on whether these conditions should apply only to NGSO FSS gateway earth stations located within a Growth Zone, or whether they should also apply to those in proximity to, or within a certain distance of, a Growth Zone, and, if so, what the proximity criteria or distance should be. We also seek comment on whether these conditions should apply only to the protection of FS stations located within the Growth Zone in which the NGSO FSS earth station is located, or whether they should also apply to the protection of other FS stations located outside that Growth Zone but within the coordination contour of the earth station. Further, we seek comment on whether the level of impact from future FS applicants, expressed in the proposal as an aggregate level of interference from any FS stations (*see* (c) in paragraph 9 of the NPRM, should apply case-by-case to individual transmit frequencies, to the aggregate of transmit frequencies operating on a single transmit path from a station, or to all frequencies on all transmit paths from a station. We seek comment on whether these conditions are appropriate to ensure equitable sharing. We also seek comment on whether other conditions or changes to our coordination procedures would be appropriate to address sharing between these services.

B. Coordination Between FSS and BAS/CARS Operations at 7 GHz and 13 GHz

6. *Proposal.* We acknowledge that frequency coordination and spectrum sharing between FSS and BAS/CARS fixed and mobile operations will be challenging. Nevertheless, we believe that spectrum sharing between FSS earth stations (both GSO and NGSO) and BAS/CARS fixed and mobile operations is feasible because the number of new FSS earth stations should be relatively small. We find that there are several factors that affect how fixed, mobile, and fixed-satellite services will share the 7 GHz and 13 GHz bands. For example, mobile BAS/CARS operations, which may include aeronautical operations, require a great deal of deployment flexibility to cover news or events when and where they happen, whereas fixed BAS/CARS and FSS operations are stationary and often have high requirements for reliability. Further, the interference protection expectations of mobile BAS/CARS operations, which may rely upon informal *ad hoc* coordination, would likely be different than those of fixed BAS/CARS and FSS operations, which coordinate their use prior to authorization to ensure reliable communications. Therefore, we address separately mobile and fixed BAS and CARS coordination with FSS for the 7 GHz and 13 GHz bands.

7. *Coordination of FSS with Mobile BAS and CARS operations.* We propose to maintain the existing coordination requirements for both FSS and mobile BAS and CARS operations in the 7 GHz and 13 GHz bands, rather than propose to require that all operations in the bands follow the same coordination procedures. Thus, NGSO and GSO FSS operators seeking to deploy new earth stations in these bands would continue to initiate coordination with mobile BAS and CARS operations using the coordination procedures in §§ 25.203, 25.251 and 101.103(d). Similarly, new mobile BAS and CARS operations initiating coordination in the 7 GHz and 13 GHz bands would continue to have the flexibility to use either the informal *ad hoc* local coordination procedures in §§ 74.638 and 78.36 or the coordination procedures in § 101.103(d) to coordinate with FSS earth stations.

8. We first address the coordination procedures that an FSS entity would use when it initiates coordination for a new earth station. At the outset, pursuant to §§ 25.203(b) and 25.251, the FSS entity needs to identify the coordination distance contour for the earth station based on the technical criteria contained in ITU Appendix 7 and certain ITU Recommendations. These technical criteria address protection of mobile as well as terrestrial fixed facilities, and thus, we believe, contain sufficient technical rigor to enable identification and protection of mobile TVPU stations. In this context, however, we note that the maximum coordination distances and coordination contours calculated using ITU Appendix 7 are conservatively large, particularly for sharing between an NGSO FSS earth station and aeronautical TVPU stations. Considering the relative brevity of TVPU operations, particularly for worst-case pointing by either an earth station or a mobile antenna, we seek comment on whether these distances should be changed with a view toward reducing the overall coordination burden where the potential for interference is minimal. Parties favoring reducing the coordination distances should support alternative distances with appropriate engineering analysis.

9. Regarding the administrative aspects of coordination for FSS earth stations, our parts 25 and 101 rules require notification to all potentially affected licensees and applicants within the ITU Appendix 7 coordination distance contour for the earth station. We note that the rules give applicants the flexibility to determine how best to identify facilities that may affect or be affected by the proposed facilities, and licensees who must be notified. Thus, in addition to thoroughly checking relevant Commission and any other licensing databases to assess both local and nationwide licensees that may have operations in the affected area, the FSS earth station applicant should also find it useful to contact local broadcast frequency coordinators, where they exist, to help identify the licensees with operations within the coordination contour of the FSS earth station, that need to be notified. Once notification is initiated, any responses from affected parties indicating potential interference must specify the technical details in writing, and all parties must make every reasonable effort to eliminate all technical problems and conflicts. Further, if no response is received within the 30 day period, the applicant will be deemed to have made reasonable efforts to coordinate and may file its application. We believe that this process will meet the needs of both the new FSS applicants and the BAS/CARS incumbents, who can identify and provide full technical details of the facilities that may interfere with the proposed earth station; facilities requiring protection, including fixed receiver sites; aeronautical TVPU operations; and mobile patterns of use. Because BAS/CARS stations and FSS earth stations have co-primary allocations in these bands, new FSS entrants must protect all incumbent BAS/CARS operations. Therefore, new FSS entrants in the 7 GHz and 13 GHz bands must consider typical deployments of TVPU operations within their authorized area to ensure that existing TVPU uses and operations are not adversely affected.

10. In addition, we note that § 25.203(c)(3) requires coordination procedures to be completed within 30 days, but allows FSS applicants to extend the maximum coordination period to 45 days by mutual consent of the parties. To accommodate the notification and response process for incumbent TVPU operations, which may involve additional consideration of fixed receiver sites, aeronautical operations, and mobile patterns of use identified by notified parties as described above, we seek comment on whether the maximum coordination period should be increased beyond 45 days and, if so, for how long. We also seek comment on whether any modifications to the coordination process proposed above should be made to account for the technical and operational differences between NGSO FSS and GSO FSS earth stations.

11. We also believe the existing coordination procedures provide sufficient flexibility for the parties to agree to reduce the likelihood of interference by shielding the earth station, particularly in satellite downlink bands, or constraining operations by various means. We note that these coordination procedures have been used successfully in coordinating the three FSS downlink earth stations grandfathered by the *MSS Feeder Link R&O* with mobile BAS/CARS TVPU stations in the 7025–7075 MHz band. They have also been successfully used to coordinate FSS uplink earth stations with mobile BAS/CARS TVPU stations in the 13 GHz band. While we believe existing parts 25 and 101 coordination procedures are adequate to ensure that new FSS earth stations are deployed without interference with mobile BAS and CARS operations, we seek comment on the conclusions and proposals, and whether any additional steps or rule modifications are necessary to address the sharing scenarios in the 7 GHz and 13 GHz bands as the number of earth stations and BAS/CARS deployments increase.

12. We propose to allow BAS and CARS entities flexibility to use either the informal *ad hoc* coordination process in §§ 74.638 and 78.36 or the coordination procedures in § 101.103(d) when they initiate coordination for a new mobile BAS/CARS station with FSS earth stations in the 7 GHz and 13 GHz bands. These coordination procedures have been adequate to address sharing with BAS/CARS fixed operations and should offer sufficient protection between BAS/CARS mobile and FSS operations without unnecessary burdens and regulatory oversight. Since the number of earth stations in these bands should be few and readily identifiable through the Commission's files, BAS and CARS entities should have little difficulty in notifying the appropriate FSS entity for coordination purposes. We observe that our rules give BAS and CARS applicants the flexibility to determine how best to contact the parties they identify for coordination and thus we believe that these rules do not need to be modified in this regard. Because FSS has a co-primary allocation in these bands, new BAS and CARS entrants must protect all authorized FSS operations.

13. We recognize the *ad hoc* coordination process relies on mutual interest, cooperation, and informal negotiations among licensees. It is less burdensome to the parties and affords mobile services maximum flexibility with regard to deployment. We believe this an important factor for TVPU operations where it is not possible to predict where breaking news may happen. On the other hand, we also recognize that the more formal frequency coordination procedures in parts 25 and 101 would likely provide FSS operations with additional certainty of protection from TVPU operations. We seek comment on our proposal to allow BAS and CARS entities the flexibility to use either the *ad hoc* coordination process in §§ 74.638 and 78.36 or the coordination procedures in § 101.103(d). Commenters should address whether this approach is the best means to maintain flexibility for mobile TVPU operations and to provide adequate protection to NGSO FSS earth stations. We also seek comment on any other alternatives to our existing coordination rules for FSS and BAS/CARS mobile operations. Finally, we seek comment from small businesses or other small entities concerning the alternatives proposed.

14. In the *BAS/CARS R&O*, the Commission recently declined to expand the BAS short-term frequency coordination procedure to include a two-way notification/response coordination requirement for short-term use with respect to FSS earth stations operations. The Commission stated that all short-term operation is secondary, and that the existing Section 74.24(g) requirement to notify the local coordinating committee or co-channel licensees is sufficient to ensure short-term deployments have a minimal chance of causing harmful interference while providing broadcasters the ability to cover newsworthy events without delay. We thus propose to maintain the secondary, non-interference status of BAS short-term itinerant TVPU operations vis-a-vis primary FSS operations in the 7 GHz and 13 GHz bands. In this connection, we remind BAS short-term operants that they are responsible for ensuring notification to any co-channel FSS earth station within whose coordination contour a prospective short-term deployment is contemplated, whether notification is effected through a local frequency coordinator or directly with the FSS earth station. We also propose to require CARS short-term operators to notify either the local frequency coordinator or co-channel licensees, including licensees of FSS earth stations, and provide the name and telephone number of a person who may be contacted in the event of interference, except where it is impractical, similar to the BAS notification requirements. We believe this action will provide more certainty to licensed fixed, mobile, and particularly earth station operations without burdening CARS short-term itinerant operations. In this connection, we seek comment on whether the status of CARS short-term operations should be on a secondary, non-interference basis, similar to BAS short-term operations. Because short-term itinerant TVPU operations would be susceptible to interference if they deploy near FSS uplink earth stations, they would benefit by coordinating their use to avoid such deployment. Moreover, we encourage all parties to a coordination to cooperate in resolving any potential interference concerns regarding a prospective short-term operation. We believe that the short-term operation procedures, could be used by the short-term TVPU operants to address potential interference scenarios. Under these procedures, the short-term itinerant TVPU operants will likely contact either the local frequency coordinators or co-channel BAS/CARS licensees, who likely have been involved in FSS earth station coordinations and are aware of any existing FSS earth station in an area. Further, we do not believe there will be large areas where short-term itinerant operations would be precluded by FSS earth stations because the number of these earth stations should be limited. We seek comment on these proposals and whether other coordination steps would be necessary to address FSS sharing with short-term itinerant operations. For example, should FSS licensees maintain a point of contact to facilitate frequency engineering for short-term itinerant deployments to cover unplanned events? This point of contact could afford an avenue for rapid information exchange and thereby facilitate both the continued viability of

short-term itinerant deployments and the protection of FSS operations. Alternatively, absent any coordination, FSS entities could take precautions to protect downlink earth stations from interference from short-term itinerant TVPU operations.

15. In connection with the use of parts 25 and 101 coordination procedures for the coordination of FSS earth stations with mobile stations in the 7 GHz and 13 GHz bands, we note that the interference protection criteria in § 101.105(a), (b), and (c) for FS, and referenced by § 74.638 and 78.36, respectively, for BAS and CARS, specifically address the protection of fixed stations, but not mobile stations. We seek comment on whether those rules should be amended to apply specifically to mobile as well as fixed stations, whether they should be supplemented to include criteria unique to the protection on mobile and fixed receivers used in conjunction with mobile stations, and what the additional criteria should be. Commenters recommending additional criteria, such as the baseline interference and threshold degradation figures in §§ 101.105(a) and (b) or the conservative default criteria in § 101.105(c)(2), should support their proposals with engineering showings.

16. We believe that the approaches described for coordinating FSS (both NGSO and GSO) and BAS/CARS mobile operations achieve a viable balance between the needs of FSS licensees for certainty and reliability and the needs of BAS/CARS for flexibility. We seek comment on these findings and proposals, as well as any modifications to the above procedures that would enhance the good faith and speed of participants or otherwise improve or streamline the process without compromising our goals.

17. *Coordination of FSS and Fixed BAS and CARS Operations:* In both ET Docket No. 98–142 and ET Docket No. 98–206, the Commission stated its belief that parts 25 and 101 coordination procedures could protect both NGSO FSS earth stations and fixed BAS/CARS stations, but deferred adoption of those procedures to this proceeding. We propose to maintain the coordination procedures in §§ 25.203 and 25.251 for coordination of new FSS earth stations with fixed BAS/CARS stations in the 7 GHz and 13 GHz bands, and to adopt the coordination procedures set forth in §§ 101.21(f) and 101.103(d) for coordination of new fixed BAS and CARS stations with FSS earth stations, whether NGSO or GSO. These procedures and the ITU Appendix 7 technical criteria referenced by them have proven successful in coordinating FS facilities governed by part 101 with FSS earth stations. Fixed BAS and CARS facilities under part 74 and part 78 are similar, if not identical, to the part 101 FS facilities in frequency, technical characteristics, limitations, and use, and thus should be able to follow the same technical criteria for coordination purposes. We believe that the same coordination procedures should be used for coordinating fixed BAS and CARS with FSS in the 7 GHz and 13 GHz bands, as currently used for coordinating fixed FS with FSS in the nearby 6525–6875 MHz and 10 GHz bands. We favor using uniform coordination procedures for similar services to simplify our rules and the frequency coordination process. Therefore, we propose to amend §§ 74.638 and 78.36 to reference §§ 101.21(f) and 101.103(d) procedures for coordinating fixed BAS/CARS facilities with FSS earth stations where the prospective fixed facilities are within the coordination contour of the FSS earth station, as defined in the ITU Appendix 7. We seek comment on this proposal. We also seek comment on whether any additional measures are needed, or any additional information should be exchanged, to ensure the efficacy of these coordination procedures for fixed BAS and CARS facilities.

18. We also propose that the FS interference protection criteria in § 101.105(a), (b), and (c) apply to the protection of fixed BAS and CARS receivers and that new FSS earth stations use this criteria when coordinating with incumbent fixed BAS and CARS operations. We believe use of these criteria will be as successful for protecting fixed BAS and CARS receivers as they have proven to be for FS receivers. We seek comment on these conclusions and proposals.

Initial Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act (''RFA''),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM of Proposed Rulemaking (''NPRM''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

20. By this action (NPRM), we propose to modify our frequency coordination rules to promote sharing between non-geostationary satellite orbit (NGSO) and geostationary satellite orbit (GSO) fixed-satellite service (FSS) operations and various terrestrial services operating in several frequency bands. Specifically, we consider a joint proposal by SkyBridge L.L.C. and the Fixed Wireless Communications Coalition (Skybridge/FWCC Growth Zone Proposal) to supplement our existing coordination procedures to promote sharing between new NGSO FSS space-to-Earth (downlink) operations and existing Fixed Service (FS) operations in the 10.7–11.7 GHz (10 GHz) band.[2] We also set forth proposals for amending our frequency coordination rules to address situations where NGSO FSS and GSO FSS operations share spectrum with terrestrial operations in the FS, Broadcast Auxiliary Service (BAS) and Cable Television Relay Service (CARS) in various bands. Specifically, we:

- Propose to apply the principles of the Skybridge/FWCC Growth Zone Proposal to our coordination rules for NGSO FSS downlink operations sharing with FS operations in the 10 GHz band;
- Propose to apply the existing parts 25 and 101 coordination rules for coordination of new FSS (both NGSO and GSO) earth stations with mobile BAS/CARS operations in the 6875–7075 MHz (7 GHz) and 12750–13250 MHz (13 GHz) bands, and consider whether any additions or modifications to the rules are needed to address the operating characteristics of mobile services;
- Propose to allow either the parts 74 and 78 informal *ad hoc* coordination rules or the part 101 coordination rules to be used for the coordination of mobile BAS/CARS operations with FSS

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* SkyBridge/FWCC *Ex Parte* Comments in ET Docket No. 98–206, filed December 8, 1999, at 3. These *ex parte* comments are included in the docket file for this proceeding. SkyBridge filed one of the petitions for rulemaking (RM–9147) to which ET Docket No. 98–206 responds and is one of four applicants for NGSO FSS satellite systems in the 10 GHz band. The FWCC is a coalition of microwave equipment manufacturers, licensees, and their associations, and communications service providers and their associations, interested in terrestrial fixed microwave communications.

(both NGSO and GSO) earth stations, in the 7 GHz and 13 GHz bands, and consider whether any additions or modifications of these rules are needed; and,

• Propose to apply the existing parts 25 and 101 coordination rules for sharing between new NGSO FSS earth stations and fixed BAS/CARS operations in the 7 GHz and 13 GHz bands.

We undertake this proceeding to facilitate the introduction of new satellite and terrestrial services while promoting interference protection among the various users in these bands.

Legal Basis

21. The proposed action is authorized under sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

22. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').[5] A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' [6] Nationwide, as of 1992, there were approximately 275,801 small organizations.[7] The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [8] As of 1997, there were about 87,453 governmental jurisdictions in the United States.[9] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

23. Regarding incumbent cable television operations in the affected bands, the SBA has developed a small business size standard for Cable and Other Program Distribution, which consists of all such firms having $12.5 million or less in annual receipts.[10] This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[11] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

24. In addition, the Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[12] Estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.[13] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted in the NPRM.

25. Further, the Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [14] The Commission has determined that there are 67,700,000 subscribers in the United States.[15] Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[16] Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450.[17] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[18] and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

26. Regarding incumbent GSO FSS satellite use and the proposed NGSO FSS use in these requested bands, the Commission has not developed a definition of small entities specifically directed toward geostationary or non-geostationary orbit fixed-satellite service applicants or licensees. The SBA has developed a size standard for a small business within the category of Satellite Telecommunications. Under that SBA size standard, such a business is small if it has $12.5 million or less in average

[3] 5 U.S.C. 601(6).

[4] *See Id.* 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' *Id.*

[5] *See* Small Business Act, 15 U.S.C. 632.

[6] 5 U.S.C. 601(4).

[7] U.S. Census Bureau, 1992 Economic Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[8] 5 U.S.C. 601(5).

[9] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[10] 13 CFR 121.201, NAICS code 517510 (changed from 513220 in October 2002).

[11] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4, NAICS code 513220 (issued October 2000).

[12] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration,* 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

[13] Paul Kagan Associates, Inc., *Cable TV Investor,* February 29, 1996 (based on figures for December 30, 1995).

[14] 47 U.S.C. 543(m)(2).

[15] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, Public Notice DA 01–158 (January 24, 2001).

[16] 47 CFR 76.901(f).

[17] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operators, Public Notice, DA–01–0158 (released January 24, 2001).

[18] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

annual receipts.[19] According to Census Bureau data for 1997, in this category there was a total of 324 firms that operated for the entire year.[20] Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999.[21] Thus, under this size standard, the majority of firms can be considered small. Generally, these NGSO and GSO FSS systems cost several millions of dollars to construct and operate. Therefore the NGSO and GSO FSS companies, or their parent companies, rarely qualify under this definition as a small entity.

27. Auxiliary, Special Broadcast and other program distribution services involve a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news-gathering unit back to the station). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: (1) For TV BAS, we will use the size standard for Television Broadcasting, *infra*; [22] (2) For Aural BAS, we will use the size standard for Radio Stations, *infra*; [23] (3) For Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

28. The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having $12 million or less in annual receipts.[24] Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' [25] According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [26] must be included.[27] Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).[28] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard.

29. The SBA has developed a small business size standard for Radio Stations, which consists of all such firms having $6 million or less in annual receipts.[29] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' [30] According to Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States had revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and, that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [31] are included.[32] Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action.

30. We believe, however, that most, if not all, of the auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above.

31. Incumbent microwave services in the 7 GHz, 10 GHz, and 13 GHz bands include common carrier, private operational fixed, and BAS services. Presently there may be up to 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The SBA has developed a small business size standard for Cellular and other Wireless Telecommunications, which consists of all such companies having 1,500 or fewer employees.[33] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[34] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 had employment of 1,000 employees or more.[35] Thus, under this standard, the majority of firms can be considered small. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

32. We propose changes to the part 74, 78, and 101 rules governing coordination between NGSO FSS and other terrestrial services. Specifically, certain obligations will be imposed on NGSO FSS licensees in order to protect potential growth opportunities for terrestrial services in the 10 GHz band, and proposed coordination rules will govern the use of shared frequencies between FSS and BAS/CARS terrestrial

[19] 13 CFR 121.201, NAICS code 517410 (changed from 513340 in October 2002).

[20] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513340 (issued October 2000).

[21] *Id.*

[22] 13 CFR 121.201, NAICS code 515120 (changed from 513120 in October 2002).

[23] *Id.* at NAICS code 515112 (changed from 513112 in October 2002).

[24] *Id.* at NAICS code 515120 (changed from 513120 in October 2002).

[25] OMB, North American Industry Classification System: United States, 1997, at 509 (1997). This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See id.* at 502–05, NAICS code 512120, Motion Picture and Video Production; code 512120, Motion Picture and Video Distribution; code 512191, Teleproduction and Other Post-Production Services; and code 512199, Other Motion Picture and Video Industries.

[26] ''Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).

[27] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size.'' 13 CFR 121.103(a)(4).

[28] FCC News Release, ''Broadcast Station Totals as of September 30, 2002'' (Nov. 6, 2002).

[29] 13 CFR 121.201, NAICS code 515112 (changed from 513112 in October 2002).

[30] *Id.*

[31] ''Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 3 CFR 121.103(a)(1).

[32] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121.103(a)(4).

[33] 13 CFR 121.201, NAICS code 513322.

[34] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513310 (issued Oct. 2000).

[35] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

services in the 7 and 13 GHz bands.[36] As noted in the section entitled ''Need for, and Objectives of, the Proposed Rules'', *supra*, in the 7 and 13 GHz bands, we are applying existing parts 25 and 101 coordination rules for coordination of new FSS earth stations with mobile BAS/CARS operations; allowing either existing part 74/78 *ad hoc* coordination rules or part 101 coordination rules for coordination of new BAS/CARS mobile operations with FSS earth stations; and applying existing parts 25 and 101 coordination rules for coordination of new FSS earth stations and new fixed BAS/CARS operations.[37]

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''[38]

34. We propose to adopt or seek comment on adequate spectrum sharing criteria to minimize the potential for interference of these new NGSO FSS operations on incumbent operations, many of which qualify as small entities. Further, to promote system growth for the fixed microwave service, we are proposing to establish obligations on NGSO FSS licensees to ensure flexible growth potential. This proposal should permit FS small entities some level of assurance that future terrestrial links can be established without hindrance from NGSO FSS earth stations. Further, our coordination rules will ensure that BAS, CARS, and NGSO FSS services can operate sharing these bands without impacting other services' operations. We also note that, in the Discussion Section of the Notice, we have requested comment from small businesses and other small entities concerning the alternatives proposed for our coordination rules.[39] We request comment on our conclusions and any alternatives to our proposals that could minimize the impact of this action on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

35. None.

Ordering Clauses

36. Pursuant to sections 4(i), 4(j), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), and 303(r), this Notice of Proposed Rule Making *is hereby adopted*.

37. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 25

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Satellites.

47 CFR Parts 74 and 78

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amends 47 CFR parts 25, 74, and 78 as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

2. Section 25.201 is amended by adding the following definition in alphabetical order to read as follows:

§ 25.201 Definitions.

* * * * *

Fixed service growth zone. A fixed service (FS) growth zone is any county in which at least 30 FS frequencies are licensed to transmit in the 10.7–11.7 GHz band. Growth zone determinations shall be made at the time of submission of a request for coordination of the NGSO FSS gateway earth station to a frequency coordinator and shall be a component of the coordination process required under this part.

* * * * *

3. Section 25.203 is amended by adding paragraph (l) to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(l) NGSO FSS gateway earth stations operating in the 10.7–11.7 GHz band may be located in a fixed service (FS) growth zone, as defined by § 25.201 and recognized during the gateway earth station's coordination process pursuant to its license application, subject to the following conditions:

(1) The NGSO FSS gateway earth station located in the FS growth zone shall be in accordance with standard coordination procedures, except that coordination shall assume that all FS stations relevant to the coordination are operating on all FS transmit frequencies in the 10.7–11.7 GHz band; and

(2) If an FS applicant seeking to operate a new FS station in an FS growth zone would be precluded, under the standard coordination procedures, at a particular location in the band due to the existence of the gateway earth station, the gateway earth station licensee shall, at the FS applicant's request, be responsible for reducing the effect on the gateway earth station of the power radiated by the proposed FS station to the greatest extent practicable, consistent with sound engineering practices and in a manner that does not materially degrade the operational capabilities of the gateway earth station, up to a maximum of 20 dB below the interference level derived from the free-space coordination calculation; and

(3) In order to locate an NGSO FSS gateway earth station at a particular site within an FS growth zone that otherwise would not be acceptable under the standard coordination procedures, an NGSO FSS gateway earth station applicant may voluntarily agree to accept, from a specified azimuth, a certain level of interference from a particular FS station in excess of the level that would be consistent with the standard coordination procedures. To the extent that an NGSO FSS gateway earth station is sited pursuant to this subsection, the licensee shall in the future be obligated to continue to accept, from that specified azimuth, that

[36] *See* Notice ¶¶ 11–14, *supra*. *See* list of obligations at NPRM ¶ 9, *supra*.

[37] *See* Notice ¶¶ 22, 34, *supra*.

[38] 5 U.S.C. 603(c)(1)–(c)(4).

[39] *See* NPRM ¶¶ 28, *supra*.

same aggregate level of interference from any FS stations; and

(4) In coordinating a new FS station with an NGSO FSS gateway earth station located in an FS growth zone, the coordination shall not take into account NGSO FSS gateway earth station antenna elevation angles below the lowest geometric elevation angle that can be employed by the NGSO FSS gateway earth station for each direction of azimuth, taking into account the specific characteristics of the relevant satellite constellation; and

(5) If, at the time of submission of a request for coordination of a particular NGSO FSS gateway earth station site to a frequency coordinator, that site is located outside of any FS growth zone, any NGSO FSS gateway earth station facility subsequently licensed to operate at that site shall not be subject to the provisions of paragraphs (l)(1) through (4) of this section, regardless of whether the county in which that site is located subsequently becomes an FS growth zone.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

4. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

5. Section 74.638 is amended by revising paragraphs (a), (b), (c) introductory text, and paragraph (d) to read as follows:

§ 74.638 Frequency coordination.

(a) Coordination of all frequency assignments for fixed stations in all bands above 2110 MHz, and for mobile (temporary fixed) stations in the bands 6425–6525 MHz and 17.7–19.7 GHz, will be in accordance with the procedure established in paragraph (b) of this section, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. Coordination of all frequency assignments for all mobile (temporary fixed) stations in all bands above 2110 MHz, except the bands 6425–6525 MHz and 17.7–19.7 GHz, will be conducted in accordance with the procedure established in paragraph (b) of this section or with the procedure in paragraph (d) of this section. Coordination of all frequency assignments for all fixed stations in the band 1990–2110 MHz will be in accordance with the procedure established in paragraph (c) of this section. Coordination of all frequency assignments for all mobile (temporary fixed) stations in the band 1990–2110 MHz will be conducted in accordance with the procedure in paragraph (d) of this section.

(b) For each frequency coordinated under this paragraph, the interference protection criteria in § 101.105(a), (b), and (c) of this chapter and the frequency usage coordination procedures in § 101.103(d) of this chapter will apply.

(c) For each frequency coordinated under this paragraph, the following frequency usage coordination procedures will apply:

* * * * *

(d) For each frequency coordinated under this paragraph, applicants are responsible for selecting the frequency assignments that are least likely to result in mutual interference with other licensees in the same area. Applicants may consult local frequency coordination committees, where they exist, for information on frequencies available in the area. In selecting frequencies, consideration should be given to the relative location of receive points, normal transmission paths, and the nature of the contemplated operation.

PART 78—CABLE TELEVISION RELAY SERVICE

6. The authority for part 78 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, and 309.

7. Section 78.11 is amended by adding a sentence to the end of paragraph (e) to read as follows:

§ 78.11 Permissible service.

* * * * *

(e) * * * *And provided, further,* that prior to such operation, the licensee shall, for the intended location or area-of-operation, notify the appropriate frequency coordination committee or any licensee(s) assigned the use of the proposed operating frequency, including licensees of fixed-satellite service earth stations, concerning the particulars of the intended operation, and shall provide the name and telephone number of a person who may be contacted in the event of interference, except that this notification provision shall not apply where an unanticipated need for immediate short-term mobile station operation would render this notification provision impractical.

* * * * *

8. Section 78.36 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (c) introductory text, and paragraph (d) to read as follows:

§ 78.36 Frequency coordination.

(a) Coordination of all frequency assignments for fixed stations in all bands above 2110 MHz, and for mobile (temporary fixed) stations in the bands 6425–6525 MHz and 17.7–19.7 GHz, will be in accordance with the procedure established in paragraph (b) of this section, except that the prior coordination process for mobile (temporary fixed) assignments may be completed orally and the period allowed for response to a coordination notification may be less than 30 days if the parties agree. Coordination of all frequency assignments for all mobile (temporary fixed) stations in all bands above 2110 MHz, except the bands 6425–6525 MHz and 17.7–19.7 GHz, will be conducted in accordance with the procedure established in paragraph (b) of this section or with the procedure in paragraph (d) of this section. Coordination of all frequency assignments for all fixed stations in the band 1990–2110 MHz will be in accordance with the procedure established in paragraph (c) of this section. Coordination of all frequency assignments for all mobile (temporary fixed) stations in the band 1990–2110 MHz will be conducted in accordance with the procedure in paragraph (d) of this section.

(b) For each frequency coordinated under this part, the interference protection criteria in § 101.105(a), (b), and (c) of this chapter and the following frequency usage coordination procedures will apply:

(1) *General requirements.* Proposed frequency usage must be prior coordinated with existing licensees, permittees, and applicants in the area, and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth. Coordination must be completed prior to filing an application for regular authorization, or a major amendment to a pending application, or any major modification to a license. In coordinating frequency usage with stations in the fixed satellite service, applicants must also comply with the requirements of § 101.21(f). In engineering a system or modification thereto, the applicant must, by appropriate studies and analyses, select sites, transmitters, antennas and frequencies that will avoid interference

in excess of permissible levels to other users. All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or re-engineer a proposal in cases involving conflicts. Applicants should make every reasonable effort to avoid blocking the growth of systems as prior coordinated. The applicant must identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved, an explanation must be submitted with the application. Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures be taken to reduce the likelihood of interference in excess of permissible levels (such as the use of artificial site shielding) or would result in a reduction of quality or capacity of either system, the details thereof may be contained in the application.

* * * * *

(c) For each frequency coordinated under this part, the following frequency usage coordination procedures will apply:

* * * * *

(d) For each frequency coordinated under this part, applicants are responsible for selecting the frequency assignments that are least likely to result in mutual interference with other licensees in the same area. Applicants may consult local frequency coordination committees, where they exist, for information on frequencies available in the area. In selecting frequencies, consideration should be given to the relative location of receive points, normal transmission paths, and the nature of the contemplated operation.

[FR Doc. 04–1991 Filed 1–30–04; 8:45 am]

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Notices

Federal Register

Vol. 69, No. 21

Monday, February 2, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–091–1]

Availability of a Draft Commodity Risk Assessment for the Importation of Potatoes From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft commodity risk assessment relative to a request we have received to amend the regulations to allow the importation of potatoes from Mexico into the continental United States. We are making this draft commodity risk assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before April 2, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–091–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–091–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–091–1'' on the subject line.

You may read any comments that we receive on the draft commodity risk assessment in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register,** and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Griffin, Director, Plant Epidemiology and Risk Analysis Laboratory, Center for Plant Health Science and Technology, PPQ, APHIS, 1017 Main Campus Drive Suite 1550, Raleigh, NC 27606–5202; (919) 513–1590.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 (referred to below as the regulations) prohibit or restrict the importation of various articles into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The Animal and Plant Health Inspection Service is considering a request to amend the regulations to allow the importation of potatoes (*Solanum tuberosum* L.) from Mexico into the continental United States for consumption. To evaluate the risks associated with the importation of potatoes from Mexico, a draft commodity risk assessment, entitled ''Importation of Fresh Potato (*Solanum tuberosum* L.) Tubers from Mexico into the Continental United States'' (November 2003), has been prepared. We are making the draft commodity risk assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The draft commodity risk assessment may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/pra/.* You may request paper copies of the draft commodity risk assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the draft commodity risk assessment when requesting copies. The draft commodity risk assessment is also available for review in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this notice).

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 27th day of January 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–2022 Filed 1–30–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. 03–049N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a public meeting of the full committee on February 13, 2004. The committee will discuss: (1) Performance standards for broilers (young chickens)/ground chicken, (2) the scientific basis for establishing safety-based ''use by'' date labeling for refrigerated ready-to-eat foods, and (3) scientific criteria for redefining pasteurization. Subcommittees will also meet as follows:

February 10th—Microbiological Performance Standards for Broilers (young chicken)/Ground Chicken 8:30 a.m.–5 p.m.

February 11th—Criteria for Refrigerated Shelf-Life Based on Safety 8:30 a.m.–5 p.m.

February 12th—Scientific Criteria for Redefining Pasteurization 8:30 a.m.–12 p.m. and Criteria for Refrigerated Shelf-Life Based on Safety 1 p.m.–5 p.m.

DATES: The full Committee will hold an open meeting on Friday, February 13,

2004 from 8:30 a.m.–12 p.m. Subcommittee meetings will be held on Tuesday, Wednesday, and Thursday, February 10, 11 and 12, 2004. Subcommittee meetings are open to the public.

Note: FSIS was not able to publish notification of this public meeting in the **Federal Register** at least 15 days prior to the meeting, as required by Departmental Regulation 1041–001, due to late changes in the agenda.

ADDRESSES: The February 10–13 sub- and full-committee meetings will be held at the Sheraton Buckhead, 3405 Lenox Road; NE, Atlanta, GA 30326; telephone number 404–261–9250. Public comments and all documents related to full committee meetings will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments and NACMCF documents will also be available on the Internet at *http://www.fsis.usda.gov/OPPDE/rdad/Publications.htm.*

FSIS will finalize an agenda on or before the meeting date and post it to its Internet web page. Send an original and two copies of comments to the Food Safety and Inspection Service Docket Room: Docket #03–049N, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250. Comments may also be sent by facsimile to (202) 205–0381. The comments and official transcripts of the February 13, 2004 full committee meeting, when they become available, will be kept in the FSIS Docket Room at the above address and will also be posted on *http://www.fsis.usda.gov/OPHS/NACMCF/transcripts.*

FSIS intends to post all comments associated with this docket on its web page in the near future. The comments will also be made available in the FSIS Docket Room. See the disclaimer section below regarding modifications that may be necessary due to the presentation of the comments.

FOR FURTHER INFORMATION CONTACT: Persons interested in making a presentation, submitting technical papers, or providing comments should contact Karen Thomas, phone (202) 690–6620, Fax (202) 690–6334, e-mail address: *karen.thomas@fsis.usda.gov,* or mailing address: Food Safety and Inspection Service, Department of Agriculture, Office of Public Health and Science, Aerospace Center, Room 333, 1400 Independence Avenue, SW., Washington, DC 20250–3700. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Thomas by January 30, 2004.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established on April 18, 1988, in response to a recommendation of the National Academy of Sciences for an interagency approach to microbiological criteria for food, and in response to a recommendation of the U.S. House of Representatives Committee on Appropriations, as expressed in the Rural Development, Agriculture, and Related Agencies Appropriation Bill for fiscal year 1988. The Charter for the NACMCF is available for viewing on the FSIS Internet Web page at *http://www.fsis.usda.gov/OA/programs/nacmcf_chart.htm*

The NACMCF provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on public health issues relative to the safety and wholesomeness of the U.S. food supply including development of microbiological criteria and review and evaluation of epidemiological and risk assessment data and methodologies for assessing microbiological hazards in foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense.

Dr. Merle Pierson, Deputy Under Secretary for Food Safety, USDA, is the Committee Chair, Dr. Robert E. Brackett, Director of Food and Drug Administration's Center for Food Safety and Applied Nutrition (CFSAN), is the Vice-Chair, and Gerri Ransom, FSIS, is the Executive Secretariat.

At the February 13, 2004, meeting, the Committee will:

- Discuss performance standards work on the commodities of broilers (young chickens)/ground chicken
- Discuss continuing work on the scientific basis for establishing safety-based ''use by'' date labeling for refrigerated ready-to-eat foods
- Discuss continuing work on the scientific criteria fora redefining pasteurization.

Documents Reviewed by NACMCF

FSIS intends to make available to the public all materials that are reviewed and considered by NACMCF regarding its deliberations. Generally, these materials will be made available as soon as possible after the full committee meeting. Further, FSIS intends to make these materials available in both electronic format on the FSIS Web page, as well as in hard copy format in the docket room. Often, an attempt is made to make the materials available at the start of the full committee meeting when sufficient time is allowed in advance to do so.

DISCLAIMER: For electronic copies, all NACMCF documents and comments are electronic conversions from a variety of source formats into HTML that may have resulted in character translation or format errors. Readers are cautioned not to rely on this HTML document. Minor changes to materials in electronic format may be necessary in order to meet the electronic and information technology accessibility standards contained in Section 508 of the Rehabilitation Act in which graphs, charts, and tables must be accompanied by a text descriptor in order for the vision-impaired to be made aware of the content. FSIS will add these text descriptors along with a qualifier that the text is a simplified interpretation of the graph, chart, or table. Portable Document Format (PDF) and/or paper documents of the official text, figures, and tables can be obtained from the FSIS Docket Room.

Copyrighted documents will not be posted on the FSIS Web site, but will be available for inspection in the FSIS docket room.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice; FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at: *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the ''Subscribe to

the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC, on January 29, 2004.

Garry L. McKee,

Administrator.

[FR Doc. 04–2131 Filed 1–29–04; 1:41 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by a group of five citrus producers for trade adjustment assistance. The group represents growers of navel oranges in the state of California. The Administrator will determine within 40 days whether or not imports of clementines contributed importantly to a decline in domestic producer prices of more than 20 percent during the November 2002–May 2003 marketing year. If the determination is positive, all producers represented by the group will be eligible to apply to the Farm Service Agency for technical assistance at no cost and adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: January 19, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–2021 Filed 1–30–04; 8:45 am]

BILLING CODE 3510–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the Final Environmental Impact Statement for Amendment of National Forest Management Plans

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to a Final Environmental Impact Statement.

SUMMARY: The Forest Service, Southwestern Region, is preparing a Supplement to the Final Environmental Impact Statement (FEIS) for Amendment of Forest Plans in Arizona and New Mexico to disclose, review, and assess scientific arguments challenging the agency's conclusions over the northern goshawk's habitat preferences. The supplement will update the FEIS which amended the eleven Forest Plans in the Region for northern goshawk, Mexican spotted owl, and old growth standards and guidelines in June 1996.

DATES: The Draft Supplement to the Final Environmental Impact Statement is expected in March 2004 and the Final Supplement is expected in June 2004.

FOR FURTHER INFORMATION CONTACT: Lou Woltering, Assistant Director of Wildlife, Southwestern Region, 333 Broadway SE., Albuquerque, NM 87102.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action and Nature of Decision To Be Made

The Supplement to the FEIS is being prepared in accordance with an opinion filed November 18, 2003, by the Ninth Circuit Court of Appeals (CV–00–01711–RCB) which held that the Final EIS failed to disclose responsible scientific opposition that was addressed in the project record. The Original Notice of intent for this plan amendment was published in the **Federal Register** on June 24, 1992 (57 FR 28171). The Supplement will address the issue of scientific arguments over the northern goshawk's habitat preference and update the Final EIS for Amendment of National Forest Management Plans in the Southwestern Region. The Final EIS includes guidelines for management of habitat for the Mexican spotted owl and northern goshawk. The Final EIS was noticed for availability in the **Federal Register** on November 3, 1995 (60 FR 55841). The Record of Decision was signed June 5, 1996.

Responsible Official

The Responsible Official is the Southwestern Regional Forester, Harv Forsgren, at 333 Broadway SE., Albuquerque, New Mexico, 87102.

Public Involvement Process

The Draft Supplement to the FEIS will be circulated for a comment period following Council of Environmental Quality regulations at 40 CFR 1502.9(c.)(4).

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A Draft Supplemental Environmental Impact Statement will be prepared for comment. The comment period on the Draft Supplement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements 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 environmental impact statement stage but that are not raised until after completion of the final environmental impact statement 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 environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement 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 environmental impact statement 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 of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: January 27, 2004.

Abel Camarena,

Deputy Regional Forester, Southwestern Region, USDA Forest Service.

[FR Doc. 04–2046 Filed 1–30–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of the Advisory Committee on Agriculture Statistics Meeting

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the National Agricultural Statistics Service (NASS) announces a meeting of the Advisory Committee on Agriculture Statistics.

FOR FURTHER INFORMATION CONTACT: Carol House, Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, National Agricultural Statistics Service, 1400 Independence Avenue, SW., Room 4117 South Building, Washington, DC 20250–2000. Telephone: 202–720–4333, Fax: 202–720–9013, or e-mail: *chouse@nass.usda.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Agriculture Statistics, which consists of 25 members appointed from 7 categories covering a broad range of agricultural disciplines and interests, has scheduled a meeting on February 17–18, 2004. During this time the Advisory Committee will discuss: (1) Release of the 2002 Census of Agriculture, (2) NASS Special Activities, Publications, and Accomplishments for 2003, (3) progress on NASS year end surveys and reports, and (4) looking ahead for the 2007 Census of Agriculture.

Dates and Locations

The Committee meeting will be held 1 p.m.–4:30 p.m. on Tuesday, February 17, and 8 a.m.–4:30 p.m. on Wednesday, February 18, with an opportunity for public questions and comments at 3:30 p.m. on February 18, The Residence Inn by Marriott-Pentagon City, 550 Army Navy Drive, Arlington, Virginia.

Type of Meeting: Open to the public.

Comments: The public may file written comments to the USDA Advisory Committee contact person before or within a reasonable time after the meeting. All statements will become a part of the official records of the USDA Advisory Committee on Agriculture Statistics and will be kept on file for public review in the office of the Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, Washington, DC 20250.

Dated: January 8, 2004, at Washington, DC.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. 04–2138 Filed 1–30–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year (''sunset'') reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review,* which covers these same orders.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–5050, or Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (*''Sunset Policy Bulletin''*).

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating sunset reviews of the following antidumping duty orders:

DOC case No.	ITC case No.	Country	Product
A–570–007	731–TA–149	China	Barium Chloride.
A–427–001	731–TA–44	France	Sorbitol.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin,* the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/.*

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in these reviews. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102(b) and section 771 (9)(C), (D), (E), (F), and (G) of the Act) wishing to participate in these sunset

reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 27, 2004.

James J. Jochum,

Assistant Secretary, Import Administration.

[FR Doc. 04–2061 Filed 1–30–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation, 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–059]

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Pressure Sensitive Plastic Tape from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review.

SUMMARY: On August 27, 2003, the Department of Commerce (the Department) published a notice of initiation of changed circumstances review of the antidumping duty order on pressure sensitive plastic tape (PSPT) from Italy to determine whether Tyco Adhesives Italia S.p.A. (Tyco) is a successor-in-interest company to Manuli Tapes S.p.A. (Manuli). *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Pressure Sensitive Plastic Tape from Italy*, 68 FR 51557 (August 27, 2003) (Notice of Initiation). We have preliminarily determined that Tyco is the successor-in-interest to Manuli, for purposes of determining antidumping liability in this proceeding. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Paige Rivas, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4114 or (202) 482–0651, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2003, Tyco requested that the Department conduct a changed circumstances review of the antidumping duty order on PSPT from Italy pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended, (the Act), and 19 CFR 351.221(c)(3)(ii)(2003). Tyco claims to be the successor-in-interest to Manuli Tapes, S.p.A.[1], and, as such, claims that it is entitled to receive the same antidumping treatment as Manuli. On August 7, 2003, at the request of the Department, Tyco submitted additional information and documentation pertaining to its changed circumstances request. From November 12 through November 15, 2003, the Department conducted a verification of information pertaining to this changed circumstances review at Tyco's offices in Novara and Tyco's plant in Formia, both located in Italy.

[1] On December 31, 1999, after merging with another company, Manuli Autoadesivi S.p.A. changed its corporate name to Manuli Tapes S.p.A.

Scope of Review

Imports covered by the review are shipments of PSPT measuring over 1⅜ inches in width and not exceeding 4 millimeters in thickness, currently classifiable under items 3919.90.20 and 3919.90.50 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

Preliminary Results of Review

In submissions to the Department dated July 3 and August 7, 2003, Tyco, an Italian holding company, advised the Department that on May 8, 2001, it acquired Manuli from its owner, Manuli Packaging Group, S.p.A. (Manuli Packaging). Up to that point, Manuli was a wholly-owned subsidiary of Manuli Packaging. Prior to its purchase of Manuli, Tyco did not hold an ownership interest in any other company, nor did it produce or sell any subject or non-subject merchandise.

In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Canadian Brass*, 57 FR 20460. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final*

Results of Changes Circumstances Antidumping Duty Administrative Review, 64 FR 9979, 9980 (March 1, 1999).

Our review of the evidence provided by Tyco indicates, preliminarily, that the change in ownership has not significantly changed the company's personnel, operations, supplier/customer relationship, or production facilities. With regard to management, at verification, the Department examined Tyco's payroll records and employment history of each of its top managers before and after the acquisition took place. We note, preliminarily, that no significant changes in management have occurred.

Additionally, as the new corporate entity, Tyco provided a certified copy of the official corporate registry showing it as a successor to Manuli as of May 8, 2001, the effective date of the acquisition, as well as documents showing that since the name change, Tyco continued Manuli's production of PSPT in the same manner using the same suppliers and facilities as it did under its previous name of Manuli. *See* Memorandum to the File, Antidumping Duty Changed Circumstances Review of Pressure Sensitive Plastic Tape from Italy: Verification Report for Tyco Adhesives Italia S.p.A. (TAI) Regarding Successorship, (Verification Report), at Exhibit 9 and 12.

Furthermore, Tyco provided certified statements from its President that all activities undertaken by Manuli prior to May 8, 2001, (*i.e.*, production, sales, marketing, technical services, order receiving and freight forwarding of PSPT) have since been performed by Tyco. Finally, Tyco provided a copy of the Stock Purchase Agreement for Manuli, as well as a copy of corporate registry under the new name with the appropriate Italian authorities. *See* Verification Report, at Exhibit 8 and 10.

In sum, Tyco has presented evidence to establish a prima facie case of its successorship status. Manuli's acquisition by Tyco has precipitated minimal changes to the original Manuli corporate structure. Tyco's management, production facilities, supplier relationships, sales facilities and customer base are essentially unchanged from those of Manuli's. Therefore, the record evidence demonstrates that the new entity essentially operates in the same manner as the predecessor company. Consequently, we preliminarily determine that Tyco should be given the same antidumping duty treatment as Manuli, *i.e.*, zero percent antidumping duty cash deposit rate.

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy; Final Results of Antidumping Duty Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Tyco participates.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. 19 CFR 351.309(c)(ii). Rebuttal briefs, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Act, and section 351.221(c)(3)(i) of the Department's regulations.

Dated: January 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–2060 Filed 1–30–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of open meeting.

Date: February 27, 2004.

Time: 9 a.m. to 12 p.m.

Place: U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230 in room 3407.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) will hold a plenary meeting on February 27, 2004 at the U.S. Department of Commerce.

The ETTAC will discuss trade issues and preparations for a paper on environmental technologies exports issues. Time will be permitted for public comment. The meeting is open to the public.

Written comments concerning ETTAC affairs are welcome anytime before or after the meeting. Minutes will be available within 30 days of this meeting.

The ETTAC is mandated by Public Law 103–392. It was created to advise the U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. ETTAC operates as an advisory committee to the Secretary of Commerce and the Trade Promotion Coordinating Committee (TPCC). ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2004.

For further information phone Corey Wright, Office of Environmental Technologies Industries (ETI), International Trade Administration, U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI at (202) 482–5225.

Dated: January 23, 2004.

Carlos F. Montoulieu,

Director, Office of Environmental Technologies Industries.

[FR Doc. 04–2074 Filed 1–30–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 040127027–4027–01]

United States Spectrum Management Policy For the 21st Century

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce

ACTION: Notice of Inquiry

SUMMARY: The United States Department of Commerce's National Telecommunications and Information

Administration (NTIA) seeks comments on policy reforms relative to the management of the natural resource known as the ''radio frequency spectrum.'' In the Executive Memorandum on Spectrum Policy in the 21st Century signed by President George W. Bush on May 29, 2003, the Administration announced its commitment to develop and implement a modernized United States spectrum policy.[1] Pursuant to this commitment, the Secretary of Commerce is conducting a comprehensive review to develop recommendations for improving the United States' spectrum management policies regarding the organization, processes, and procedures affecting Federal government, State, local and private sector spectrum use.

DATES: Comments are requested on or before March 18, 2004.

ADDRESSES: Written comments may be submitted by mail to Norbert Schroeder, Strategic Spectrum Planning and Reform Division, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4082, Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to *spectrumreform@ntia.doc.gov*. Comments provided via electronic mail should also be submitted in one or more of the formats specified above. Comments will be posted on NTIA's website at *http://spectrumreform.ntia.doc.gov*.

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact: Norbert Schroeder, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4082, Washington, DC 20230; telephone: (202) 482–6207; or e-mail: *nschroeder@ntia.doc.gov*; or Derrick Owens, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW. , Room 4099, Washington, DC 20230; telephone: (202) 482–1850; or email: *dowens@ntia.doc.gov*.

SUPPLEMENTARY INFORMATION: BACKGROUND: On May 29, 2003, President George W. Bush signed an Executive Memorandum announcing the Administration's commitment to develop and implement a comprehensive United States Spectrum Policy for the 21st Century that will: (a) Foster economic growth; (b) ensure national and homeland security; (c) maintain U.S. global leadership in communications technology development and services; and (d) satisfy other vital U.S. needs in areas such as public safety, scientific research, Federal transportation infrastructure, and law enforcement.

To promote these goals, the Executive Memorandum directed the Department of Commerce to prepare legislative and other recommendations to:

(1) Facilitate a modernized and improved spectrum management system;

(2) Facilitate policy changes to create incentives for more efficient and beneficial use of the spectrum and to provide a higher degree of predictability and certainty in the spectrum management process as it applies to incumbent users;

(3) Develop policy tools to streamline the deployment of new and expanded services and technologies, while preserving national and homeland security, and public safety, and encouraging scientific research; and

(4) Develop means to address the critical spectrum needs of national security, homeland security, public safety, Federal transportation infrastructure, and science.

To develop a complete record as it prepares these reports, NTIA seeks comments on the state of the U.S. spectrum management policy.

Request for Comments

The questions below are only intended to assist in identifying the issues and should not be construed as a limitation on comments that may be submitted. If policy reforms requiring enactment of legislation are recommended, please provide the nature and scope thereof. When references are made to studies, research, and other empirical data that are not widely published, please provides copies of the referenced materials with the submitted comments.

First Objective: Facilitate a Modernized and Improved Spectrum Management System

Federal Government Organizational Issues

The spectrum management activities in the Federal government are conducted primarily by NTIA, the Federal Communications Commission (FCC), and the Department of State. The NTIA manages the spectrum used by Federal government agencies, the FCC manages the spectrum used by non-Federal entities, and the Department of State is responsible for coordinating United States participation in international fora where spectrum management issues are addressed. The policies for seeking authorization from the NTIA are found in the ''Manual of Regulations and Procedures for Federal Radio Frequency Management.''[2] The policies for seeking authorization from the FCC are found in Title 47 of the Code of Federal Regulations.[3] In cases where authorization is sought for the use of a portion of spectrum for which the NTIA and the FCC have shared spectrum management responsibility, the prospective spectrum user is required to satisfy both sets of policies.

1. Does the bifurcated spectrum management system currently used by the United States present obstacles to the most efficient and benefical use of the spectrum? Should the Federal government consider establishing a centralized organization to perform these functions?

2. What are the benefits and risks of combining the common administrative processing functions performed by the NTIA and the FCC?

Spectrum Allocation Issues

3. Published versions of the United States Table of Frequency Allocations compiled by NTIA[4] and FCC[5] differ in several ways (*e.g.*, different priorities, different document printing schedules, *etc.*). NTIA seeks comments on the feasibility, benefits, and risks of replacing the existing tables with a single national policy document.

4. The table of allocations divides the spectrum into various categories: government exclusive, non-government exclusive, and shared. Are the current exclusive allocations justified?

Frequency Coordination

5. The FCC has delegated specific portions of its spectrum management authority to certified frequency advisory committees that are authorized to receive applications for spectrum uses from a selected group of users,

[1] Presidential Memorandum on Spectrum Policy for the 21st Century, 69 FR 1568 (Jan. 9, 2004).

[2] Manual of Regulations and Procedures for Federal Radio Frequency Management, National Telecommunications and Information Administration, U.S. Department of Commerce, Chapters 4, 8 and 9 (2003), available at *http://www.ntia.doc.gov/osmhome/redbook/redbook.html*. *See also*, 47 CFR 300.1 (2002).

[3] 47 CFR part 1 (2002).

[4] *See id.*

[5] 47 CFR 2.106 (2002).

coordinate the applications among the affected incumbent spectrum users, and submit the coordinated applications to the FCC for approval. NTIA seeks your comments on improving this process or expanding this management concept to other bands.

State, Local, and Tribal Government Issues

6. Currently the responsibility for managing the spectrum used by State, local, and tribal governments rests with the FCC. Because of the need for Federal government agencies to work closely with State, local and tribal governments located near Federal installations throughout the States, and because of the need for close coordination among the homeland security activities of Federal, State, local, and tribal governments, the interoperability of the radiocommunication facilities used by all of these agencies is essential.

a. What are the barriers to achieving interoperability among the different levels of government entities?

b. What would be necessary to achieve improved standardization of the radiocommunication facilities used by State, local, and tribal governments to enhance interoperability among the assets used by these entities?

c. What, if any, technical assistance is most needed by State, local, and tribal governments for radiocommunication facilities planning for effective and efficient use of the spectrum?

International Issues

7. The Department of State serves as the lead negotiator of the United States in making arrangements relative to spectrum use: (1) with neighboring foreign administrations regarding operations of radio systems near borders; and (2) with other countries globally or regionally in regards to such areas as regulations, accommodations of new technologies, standards, and revised and new allocations via meetings with international telecommunications bodies such as the International Telecommunication Union (ITU) and the Inter-American Telecommunications Commission (CITEL). The FCC, NTIA, and the International Telecommunication Advisory Committee-Radiocommunication Activity (ITAC-R) have roles in these preparations and negotiations. NTIA seeks comment on methods to improve the effectiveness and efficiency of the U.S. national process (preparation through implementation) that results in these arrangements.

Planning

8. Should the U.S. spectrum management system include long-range planning activities by NTIA, the FCC, and other Federal agencies?

a. What should be the nature, scope, and objective of these planning activities?

b. What should be the nature and scope of the public involvement in these planning activities?

c. What approaches can be used to identify and project the future spectrum requirements of the Federal agencies?

d. What approaches can be used to identify and project the future spectrum requirements of non-Federal entities?

e. What approaches, including legislative provisions, are recommended for ensuring the availability of adequate resources in the Federal agencies for performing such planning activities?

9. NTIA seeks comment on whether the current long-range spectrum-planning mechanisms in place at the NTIA, the FCC, and the ITU provide appropriate assurances to consumers, service providers, and government institutions that sufficient spectrum will be available to satisfy projected requirements.

Second Objective: Facilitate Policy Changes to Create Incentives for Achieving More Efficient and Beneficial Use of the Spectrum, and Provide a Higher Degree of Predictability and Certainty in the Spectrum Management Process as It Applies to Incumbent Users

10. Efficiency has been defined in a number of ways, *e.g.*, technical efficiency (bandwidth, frequency reuse, geographical coverage, *etc.*), economic efficiency (revenue, profit, added value, *etc.*), and functional efficiency (reliability, quality, ease of use, *etc*). Depending on the balance of these types of efficiency metrics, there could be different benefits to users, taxpayers, various stakeholders, the economy, and society. NTIA seeks comment on the definitions of these terms and how they may be used in developing spectrum policy.

11. Considering these economic, technical, and functional metrics, how should the term ''spectrum efficiency'' be defined to provide useful tools in managing the spectrum resource? What metrics can be used to apply the definition?

12. What incentives or changes in policy should be imposed on the Federal and private sector spectrum users or potential users to use the spectrum more effectively and efficiently?

13. What mechanisms could be established for promoting improved spectrum sharing between Federal agencies and the private sector?

14. How could the general spectrum management oversight of Federal users be improved?

15. Should the fee structure and budget processes for Federal users be reformed to reflect opportunity cost of the spectrum resource?

16. What should NTIA and the Federal agencies do with temporarily unused Federal spectrum?

17. Should NTIA establish a pilot secondary lease program whereby the Federal government can lease temporary and/or preemptable access to Federal government spectrum to non-government users?

18. What would be the commercial demand for temporary and/or preemptable usage rights or spectrum commons? What would be the demand by state and local government users of such a resource?

19. Are there commercial applications for short term spectrum rights, such as overnight data caching, special event, or seasonal use?

20. Are there liability or technological issues that arise if spectrum leases are to be preemptable in an emergency by a governmental agency?

21. What issues arise for appropriators and Federal budget managers if user fees or leases are implemented?

22. What improvements are recommended to the Office of Management and Budget's budget development process and what guidance should be provided to the Federal agencies in performing cost-benefit analyses of planned spectrum use to increase spectrum sharing among Federal agencies?

23. How could NTIA best facilitate spectrum sharing among Federal agencies?

24. Discussions on efficient use of the spectrum may focus on receiver performance standards. Most spectrum uses involve at least one electromagnetic emission and at least one receiver/detector to recover the information contained in the emission. In activities such as radio astronomy and a variety of ''electromagnetic'' sensing activities (such as those of the National Aeronautics and Space Administration and Department of Commerce), only the receivers can be controlled because the emissions come from nature or space. In most other spectrum uses, the opportunity exists for controlling, through design, the operational performance of both the receiver and the emitter. NTIA seeks comments on how receiver performance

standards can be employed to increase spectrum efficiency and minimize harmful interference.

Third Objective: Develop Policy Tools To Streamline the Deployment of New and Expanded Services and Technologies, While Preserving National and Homeland Security and Public Safety, and Encouraging Scientific Research

25. What objective principles, standards, or processes are appropriate to timely evaluate proposed spectrum uses for new technologies and services to determine whether the limited spectrum resource should be used for implementing a proposed spectrum use?

26. What are the benefits and risks of establishing an organizational mechanism for designating, funding, and operating test platforms to be used in performing reasonably large-scale operational testing of proposed new and expanded radiocommunication services and technologies?

a. Discuss whether the establishment of such an organizational mechanism may expedite the implementation of new services and technology.

b. Would such a mechanism reduce the risk of causing unacceptable interference to incumbents? Are there other approaches to determine the potential impact that new and expanded radiocommunication services and technologies may have on incumbent users?

27. Should one, or more, Federal laboratories be designated and certified to perform this testing?

28. Should a mechanism be established for certifying both Federal and non-Federal laboratories to perform this testing?

29. Should a mechanism be established to authenticate or certify the interference protection required by incumbent spectrum users? If so, provide recommendations for an approach that would establish appropriate interference protection criteria.

30. Since the implementation of some new and expanded radiocommunication services and technologies may require the reallocation of spectrum, discuss whether and the extent to which auctions for spectrum licenses in given frequencies or bands of frequencies could constrain future reallocations of those frequency bands.

Fourth Objective: Develop Means To Address the Critical Spectrum Needs of National Security and Homeland Security, Public Safety, Federal Transportation Infrastructure, and Science

31. Are the current U.S. requirements for spectrum use (domestic or international) being satisfied?

a. If not, identify those requirements that are not satisfied.

b. Discuss whether actions consistent with existing policies by the spectrum managers could be taken to satisfy the unmet requirements.

c. Are there policies that contribute to or cause these requirements to remain unsatisfied?

d. NTIA seeks comment on policy reforms that may facilitate satisfying these requirements.

32. Some requirements for spectrum use by Federal government agencies and non-Federal entities are critical only during emergencies or while specific mission operations are performed. These communications channels remain unused during non-emergency periods. NTIA seeks comment on the feasibility and advisability of establishing a spectrum-sharing arrangement in which both Federal users and non-Federal users could be assured ''priority access'' to satisfy their critical spectrum requirements during emergencies or specific mission operations.

33. What policy reforms are needed to satisfy spectrum access, interoperability, and interference protection requirements?

34. The terrorists' attacks against the United States on September 11, 2001, raised serious national concerns regarding the ability of Federal, State, local, and tribal entities to maintain continuity of their critical governmental activities during future attacks as well as during unexpected natural disasters.

a. What identifiable problems or deficiencies exist in accessing adequate spectrum resources for governmental or municipal continuity of operations plans under current spectrum policies?

b. What is the proper Federal role in developing and coordinating (between the Federal, State, local, and tribal entities) the spectrum management elements relative to government continuity of operation plans?

c. What approaches could be used to improve planning at the State, local, and tribal level to ensure that adequate access to spectrum is available to first responders to an emergency situation?

35. The FCC has granted waivers authorizing certain non-public safety and public safety entities to jointly build and operate systems that operate on both private land mobile and public safety frequency allocations. In combining physical resources and spectrum, both the public safety and non-public safety entities realize economic and spectrum efficiencies. NTIA seeks comment on whether Federal government and non-Federal government systems could be similarly combined as a way to conserve physical and spectrum resources.

Dated: January 28, 2004.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 04–2054 Filed 1–30–04; 8:45 am]

BILLING CODE 3510–60–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 2004

January 28, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Keith Daly, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The Committee for the Implementation of Textile Agreements (CITA) announces that the 2004 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available in January 2004 as part of the Office of Textiles and Apparel (OTEXA) CD-Rom publication.

The CD-Rom may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Yolanda Peterson, at a cost of $25. Checks or money orders should be made payable to the U.S. Department of Commerce. The Correlation is also available on the OTEXA website at *http://otexa.ita.doc.gov.*

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–2070 Filed 1–30–04; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 2, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of Army, HQDA, ODCS, G–1 (DAPE–MP–PRO) Attn: Mr. Raymond C.V. Robinson, Jr., 300 Pentagon, Washington, DC 20301–0300.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 693–2124.

Title, Associated Form, and OMB Control Number: Automated Repatriation Reporting System, DD Form 2585, OMB Number 0704–0334.

Needs and Uses: This information collection is necessary for personnel accountability of all evacuees, regardless of nationality, who are processed through designated Repatriation Centers throughout the United States. The information obtained from the DD Form 2585 is entered into an automated system; a series of reports is accessible to DoD Components, Federal and State agencies and Red Cross, as required.

Affected Public: Individuals or households, Federal government, State and local governments, not-for-profit institutions.

Annual Burden Hours: 1,667.

Number of Respondents: 5,000.

Responses per Respondent: One.

Average Burden Per Response: 20 minutes.

Frequency: One-time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Executive Order 12656 (Assignment of Emergency Preparedness Responsibilities) assigns Federal departments and agencies responsibilities during emergency situations. In its supporting role to the Departments of State and Health and Human Services (HHS), the Department of Defense will assist in planning for the protection, evacuation and repatriation of U.S. citizens in threatened areas overseas. The DD Form 2585, Repatriation Processing Center Processing Sheet, has numerous functions, but is primarily used for personnel accountability of all evacuees who process through designated Repatriation Centers. During processing, evacuees are provided emergency human services, including food, clothing, lodging, family reunification, social services and financial assistance through federal entitlements, loans or emergency aid organizations. The information, once collected, is input into the Automated Repatriation Reporting System, and is available to designated offices throughout Departments of Defense, State, Health and Human Services, the American Red Cross and State government emergency planning offices for operational inquiries and reporting and future planning purposes.

Dated: January 23, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2030 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by March 3, 2004.

Title, Form, and OMB Number: Personal Information Questionnaire; OMB Number 0703–0012.

Type of Request: Reinstatement.

Number of Respondents: 16,700.

Responses per Respondent: 1.

Annual Responses: 16,700.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 4,175.

Needs and Uses: This collection of information is used by the U.S. Marine Corps to provide a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for a service as a commissioned officer.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 23, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2031 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by March 3, 2004.

Title, Form, and OMB Number: Personal Check Cashing Agreement; OMB Number 0730–0005.

Type of Request: Reinstatement.

Number of Respondents: 386,000.

Responses per Respondent: 1.

Annual Responses: 386,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 193,000.

Needs and Uses: This collection of information is necessary to meet the Department of Defense's (DoD) requirement for cashing personal checks overseas and afloat by DoD disbursing activities, as provided in 31 U.S.C. 3342. The DoD Financial Management Regulation, Volume 5, provides guidance to DoD Disbursing Officers in the performance of this information collection. This provides the DoD disbursing officer or authorized agent the authority to offset the pay without prior notification in cases where this form has been signed subject to conditions specified within the approved procedures.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 23, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2032 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by March 3, 2004.

Title, Form, and OMB Number: Diagnosis Related Group Reimbursement; OMB Number 0720–0017.

Type of Request: Reinstatement.

Number of Respondents: 5,200.

Responses Per Respondent: 1.

Annual Responses: 5,200.

Average Burden per Response: 1 hour.

Annual Burden Hours: 5,200.

Needs and Uses: The TRICARE/CHAMPUS contractors will use the information collected to reimburse hospitals for TRICARE/CHAMPUS' share of capital and direct medical education costs.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 27, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2038 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by March 3, 2004.

Title, Form, and OMB Number: Involuntary Allotment Application; DD Form 2653; OMB Number 0704–0367.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 7,531.

Responses per Respondent: 1.

Annual Responses: 7,531.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 3,766.

Needs and Uses: This collection of information is necessary to initiate an involuntary allotment from the pay of a member of the Uniformed Services for indebtedness owed a third party under 5 U.S.C. 5520a, which authorizes involuntary allotments if there is a final court judgment acknowledging the debt and it is determined by competent military or executive authority to be in compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act. In order to satisfy these statutory requirements, the DD Form 2653 requires the respondent to provide identifying information on the member of the Uniformed Services; provide a certified copy of the judgment; and certify, if applicable, that the judgment complies with the Soldiers' and Sailors' Civil Relief Act.

Affected Public: Individuals or households; businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis. Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 2202–4302.

Dated: January 27, 2004.

Particial L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2039 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06—M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on February 10, 2004, from 10 a.m. to 8 p.m. and February 11, 2004, from 9 a.m. to 3 p.m.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board

will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App II (1982)), it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: January 23, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2033 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Transition to and from Hostilities (2004 Summer Study) will meet in closed session on February 20, 2004; March 23, 2004; April 19, 2004; May 7, 2004; June 9, 2004; and July 19, 2004, in Arlington, VA (exact location to be determined).

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will focus on: (1) *Understanding and shaping the environment:* the gathering of long-lead intelligence and effective preparation of the battlefield—in the absence of an immediate threat; (2) *Force protection during transition:* in the transition to the post hostilities phase the forces become much more stationary, which makes them easier targets for residual resistance. What technologies, tactics and procedures can provide force protection in an almost instantaneous transformation from maneuver warfare to a garrison force charged with establishing order; (3) *Disarmament and destruction of munitions stocks:* what capabilities are needed to address disposal, as well as environmental and security issues associated with these unwanted devices; (4) *Intelligence exploitation in the aftermath:* rapid, decisive battlefield victory can produce a rich vein of captured documents, materiel, and human sources, but their exploitation, today, is personnel-intensive and requires good language skills coupled with substantive and cultural understanding. What approaches can more swiftly and economically process said collection? (5) *Stabilizing the civilian population:* There will be inevitable need to address problems of refugees and displaced persons, mortuary assistance, food supply, housing and health care. DoD will likely be charged with these challenges: what preparation, training and technology can be applied to facilitate these elements of infrastructure? (6) *Re-establishing the rule of law:* One important step in establishing order is the need to reconstitute a constabulary force. Improvements are needed in our methods for vetting applicants, tracking them and their behavior, and avoiding friendly fire incidents between them and our own forces. Improved technologies are desirable for their selection, training, and interoperability with US forces. (7) *Rapid rebuilding of basic infrastructure:* this requires reliable communications and interim power and potable water sources. How rapidly can these be inserted? Might there be opportunity for establishing subsequent monitoring capabilities? In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: January 23, 2004.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2035 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Weapons Effects Test, Evaluation and Simulation will meet in closed session on March 17–18, 2004; April 7–8, 2004; May 6–7, 2004; June 21–22, 2004; and July 14–15, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will review DoD needs and specific requirements for nuclear weapons effects (NWE) test, evaluation and simulation capabilities.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Review Intelligence Community, DoD and National Nuclear Security Agency estimates of present and future nuclear weapon outputs for all weapons that are used to define the operational threat; review nuclear threat environments as used across DoD Services and Agencies and assess whether they are being defined and applied to develop credible consistent hardness requirements; assess the current NWE predictive capability to confidently predict the response of nuclear and conventional weapon systems and C4 systems to credible nuclear environments that might be encountered over the next 15 years; assess the extent to which alternatives to testing can be used to offset the need for simulation capability; identify both near-term and far-term NWE test and simulation needs responsive to DoD requirements for nuclear systems, strategic and conventional weapon systems belonging to the new Triad as defined in the Nuclear Posture Review, missile defense systems, and C4I systems required to operate in hostile nuclear environments; assess the current NWE simulation and system survivability evaluation capabilities of the DoD, the Department of Energy, and the commercial sector; produce a comprehensive roadmap of NWE test, evaluation and simulation capabilities that will guide future simulator/simulation technology developments, test planning, investment decisions, model development, facility sustainment planning and responsibilities, and realignment/closure alternatives.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: January 23, 2004.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2036 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Patriot Systems Performance will meet in closed session on April 7–8, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the recent performance of the Patriot System in Operation Iraqi Freedom from deployment through use across the threat spectrum.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will: assess logistical, doctrine, training, personnel management, operational and material performance; identify those lessons learned which are applicable to the development of the Medium Extended Air Defense System (MEADS); and assess the current planned spiral development of the Patriot to ensure early incorporation of fixes discovered in the lessons learned process.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: January 23, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2037 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

The Joint Staff; National Defense University, Board of Visitors Meeting

AGENCY: National Defense University, DoD.

ACTION: Notice of meeting.

SUMMARY: The President, National Defense University has scheduled a meeting of the Board of Visitors (BOV). Board Hearings are open to the public.

DATES: The meeting will be held on March 18 and 19, 2004, from 11 a.m. to 5 p.m. on the 18th and continuing on the 19th from 8:30 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held in Room 155B, Okinawa Hall, building number, Joint Forces Staff College (JFSC), 7800 Hampton Boulevard, Norfolk, VA 23511–1702.

FOR FURTHER INFORMATION CONTACT: National Defense University (NDU) Deputy Chief of Staff, National Defense University, Fort Lesley J. McNair, Washington, DC 20319–6200. To reserve space, interested parties should contact the JFSC POC Mr. Steven Williams, at (757) 443–6212.

SUPPLEMENTARY INFORMATION: The agenda will include discussions on Defense transformation, faculty development, facilities and information technology, curriculum development, post 9/11 initiatives as well as other operational issues and areas of interest affecting the day-to-day operations of the National Defense University and its components. The meeting is open to the public; limited space made available for observers will be allocated on a first come, first served basis.

POC: Michael Mann, BOV Executive Secretary, *mannm@ndu.edu,* (202) 685–3903.

Dated: January 23, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–2034 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to amend systems of records.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on March 3, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DDS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 16, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S253.30 DLA–G

SYSTEM NAME:

Royalties (February 22, 1993, 58 FR 10854).

CHANGES:

SYSTEM IDENTIFIER:

Replace ''S253.30 DLA–G'' with ''S100.71.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 2304(g), Contracts: Competition requirements; 10 U.S.C. 2320, Rights in technical data; 10 U.S.C. 2511, Defense dual-use critical technology program; 15 U.S.C. 3710b, Rewards to scientific, engineering, and technical personnel of Federal agencies; and DoD Directive 5535.3, Licensing of Government-owned inventions by the Department of Defense; DoD 3200.12–R–4, Domestic Technology Transfer Program Regulation; and DFARS Part 227, Patents, Data, and Copyrights.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''Data is maintained to document the review and approval of patent royalties.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, or

guarded cabinets. The electronic records systems employ user identification and password or smart card technology protocols.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records submitted to the Office of General Counsel, HQ are destroyed 26 years after file is closed. Records maintained by Offices of General Counsel of DLA's field activities are destroyed 7 years after closure.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete ''Patent'' in the first sentence.

* * * * *

S100.71

SYSTEM NAME:

Royalties.

SYSTEM LOCATION:

Office of the General Counsel, HQ DLA–DG, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the offices of counsel of the DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and firms to which patent royalties are paid by Defense Logistics Agency contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports from DLA procurement centers of patent royalties submitted pursuant to Defense Acquisition Regulation (DAR) forwarded to Defense Logistics Agency Headquarters, Office of General Counsel for approval, and included in pricing of respective contracts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2304(g), Contracts: Competition requirements; 10 U.S.C. 2320, Rights in technical data; 10 U.S.C. 2511, Defense dual-use critical technology program; 15 U.S.C. 3710b, Rewards to scientific, engineering, and technical personnel of Federal agencies; and DoD Directive 5535.3, Licensing of Government-owned inventions by the Department of Defense; DoD 3200.12–R–4, Domestic Technology Transfer Program Regulation; and DFARS Part 227, Patents, Data, and Copyrights.

PURPOSE(S):

Data is maintained to document the review and approval of patent royalties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be referred to other government agencies or to non-government personnel (including contractors or prospective contractors) having an identified interest in the allowance of royalties on DLA contracts.

The Dod ''Blanket Routine Uses'' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and computerized form.

RETRIEVABILITY:

Filed by patent number. Names of inventors and patent owners are retrievable from these numbers.

SAFEGUARDS:

Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, or guarded cabinets. The electronic records systems employ user identification and password or smart card technology protocols.

RETENTION AND DISPOSAL:

Records submitted to the Office of General Counsel, HQ are destroyed 26 years after file is closed. Records maintained by Offices of General Counsel of DLA's field activities are destroyed 7 years after closure.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Individuals should provide information that contains full name, current address and telephone numbers of requester. For personal visits, each individual shall provide acceptable identification, *e.g.,* driver's license or identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

DLA Counsel's investigation of published and unpublished records and files both within and without the government, consultation with government and non-Government personnel, information from other Government agencies and information submitted by Government officials or other persons having a direct interest in the subject matter of the file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–2029 Filed 1–30–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Office of Science

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, February 23, 2004, 8:30 a.m. to 5 p.m., and Tuesday, February 24, 2004, 8:30 a.m. to 12 p.m.

ADDRESSES: The Hamilton Crowne Plaza, 14th & K Streets, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Talamini, Office of Basic Energy Sciences, U. S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290; telephone: (301) 903–4563.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- News from the Office of Science;
- News from the Office of Basic Energy Sciences;
- Preliminary Report of BESAC Subcommittee on Theory and Computation in Basic Energy Sciences;
- BESAC Discussion.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Karen Talamini at 301–903–6594 (fax) or *karen.talamini@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on January 27, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–2040 Filed 1–30–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; DOE/NSF Nuclear Science Advisory Committee; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 19, 2004; 8:30 a.m. to 5 p.m. and Friday, February 20, 2004; 8:30 a.m. to 5 p.m.

ADDRESSES: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Brenda L. May, U.S. Department of Energy; SC–90/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–0536.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, February 19, 2004, and Friday, February 20, 2004

- Perspectives from Department of Energy and National Science Foundation
- Presentation and Discussion on the Report from the Sub-Committee on Committee of Visitors to the DOE Office of Nuclear Physics
- Discussion of NSAC Response and Transmittal Letter on Committee of Visitors Report
- Presentation and Discussion on the Report from the Sub-Committee on GSI to RIA Comparison
- Discussion of NSAC Response and Transmittal Letter on GSI to RIA Comparison Report
- Public Comment (10-minute rule)

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Brenda L. May, 301–903–0536 or *Brenda.May@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 27, 2004.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 04–2028 Filed 1–30–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 19, 2004; 5:30 p.m.—9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 210–2215.

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 and waste management activities.

Tentative Agenda:

5:30 p.m. Informal Discussion
6 p.m. Call to Order; Approve January Minutes; Review Agenda
6:05 p.m. DDFO's Comments
6:25 p.m. Ex-officio Comments
6:35 p.m. Federal Coordinator Comments
6:45 p.m. Public Comments and Questions
6:55 p.m. Break
7:05 p.m. Task Forces/Presentations
- Waste Operations Task Force
- Water Task Force
- Long Range Strategy/Stewardship
  —DUF_6
  —Risk-Based End States

8:05 p.m. Public Comments and Questions
8:15 p.m. Administrative Issues
- Review of Work Plan
- Review of Next Agenda

- Retreat

8:35 p.m. Review of Action Items
8:50 p.m. Subcommittee Reports
- Community Concerns
- Public Involvement/Membership

9:15 p.m. Final Comments
9:30 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision 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 comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on January 27, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–2025 Filed 1–30–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

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), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, February 11, 2004; 6 p.m.–8 p.m.

ADDRESSES: Amargosa Valley Community Center, 821 East Amargosa Farm Road, Amargosa, Nevada.

FOR FURTHER INFORMATION CONTACT: Kay Planamento, Navarro Research and Engineering, Inc., 2721 Losee Road, North Las Vegas, Nevada 89130, phone: 702–657–9088, fax: 702–295–5300, e-mail *kozeliskik@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. The Nevada Site Office Environmental Management Program will provide an update to the community on the EM program, with a focus on recent waste management activities.

2. CAB members will discuss technical committee focus areas and plans for FY 2004.

From 5:30 to 6 p.m. CAB members will present the CAB Roadshow, an informational overview of the CAB's mission and activities.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kelly Kozeliski, at the telephone number listed above and reasonable provision 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. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kay Planamento at the address listed above.

Issued at Washington, DC, on January 27, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–2026 Filed 1–30–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

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), Oak Ridge. 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: Wednesday, February 11, 2004; 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

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: The meeting presentation will feature a discussion of the Focused Feasibility Study and Proposed Plan for the East Tennessee Technology Park Zone 2 Soils.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above and reasonable provision 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. This notice is being published less than 15 days before the date of the meeting due to

programmatic issues that had to be resolved.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN, between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on January 27, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–2027 Filed 1–30–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7616–8]

Investigator Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice of requests for applications.

SUMMARY: This notice provides information on the availability of fiscal year 2004 investigator initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research areas within the solicitations.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency invites research applications in the following areas of special interest to its mission: (1) Exploratory Research: Understanding Ecological Thresholds Through Retrospective Analysis, (2) Dose Response of EDCs at Low Levels of Exposure (3) PM Research Centers, (4) Pathways From Ecosystem Functioning to Aquatic Ecosystem Goods and Services, (5) Global Change and Air Quality:, (6) Genomic-based Indicators of Aquatic Ecosystem Quality, (7) Public Health Outcomes, (8) Computational Toxicology Research Centers, (9) Allergenicity of Genetically Modified Foods, (10) Valuation for Environmental Policy, (11) EaGLes (Riverine, Estuarine and Great Lakes Indicators Centers), (12) Computational Toxicology and Endocrine Disruptors: Use of Systems Biology in Hazard Identification and Risk Assessment, (13) EDC Exposure Issues, (14) Market Mechanisms and Incentives for Environmental Management, (15) Childhood Cancer.

Contacts: (1) Exploratory Research: Understanding Ecological Thresholds Through Retrospective Analysis—e-mail: *goodman.iris@epa.gov,* telephone: 202–564–8313, (2) Dose Response of EDCs at Low Levels of Exposure—e-mail: francis.elaine@epa.gov, telephone: 202–564–6789, (3) PM Research Centers—e-mail: *katz.stacy@epa.gov,* telephone: 202–564–8201 or e-mail: *robarge.gail@epa.gov,* telephone: 202–564–8301, (4) Pathways from Ecosystem Functioning to Aquatic Ecosystem Goods and Services—e-mail: *smith.bernicel@epa.gov,* telephone: 202–564–6934, (5) Global Change and Air Quality: Wildfires—e-mail: *winner.darryl@epa.gov,* telephone: 202–564–6929, (6) Genomic-based Indicators of Aquatic Ecosystem Quality—e-mail: *perovich.gina@epa.gov,* telephone: 202–564–62248, (7) Public Health Outcomes—e-mail: *fields.nigel@epa.gov,* telephone: 202–564–6936, (8) Computational Toxicology Research Centers—e-mail: *francis.elaine@epa.gov,* telephone: 202–564–6789, (9) Allergenicity of Genetically Modified Foods—e-mail: *francis.elaine@epa.gov,* telephone: 202–564–6789, (10) Valuation for Environmental Policy—e-mail: *wheeler.william@epa.gov,* telephone: 202–564–6842, (11) EaGLes (Riverine, Estuarine and Great Lakes Indicators Centers)—e-mail: *goodman.iris@epa.gov,* telephone: 202–564–8313, (12) Computational Toxicology and Endocrine Disruptors: Use of Systems Biology in Hazard Identification and Risk Assessment—e-mail: *francis.elaine@epa.gov,* telephone: 202–564–6789, (14) EDC Exposure Issues—e-mail: *francis.elaine@epa.gov,* telephone: 202–564–6789, (15) Market Mechanisms and Incentives for Environmental Management—e-mail: *clark.matthew@epa.gov,* telephone: 202–564–6824, (16) Childhood Cancer—e-mail: *deener.kathleen@epa.gov,* telephone: 202–564–8289.

FOR FURTHER INFORMATION CONTACT: The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncer,* under ''announcements.'' The required forms for applications with instructions are accessible on the Internet at *http://es.epa.gov/ncer/rfa/forms/downlf.html.* Forms may be printed from this site.

Dated: January 14, 2004.

Christopher S. Zarba,

Acting Director, National Center for Environmental Research.

[FR Doc. 04–2065 Filed 1–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7617–1]

Florida Petroleum Reprocessors Superfund Site Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlement.

SUMMARY: Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a *de minimis* settlement at the Florida Petroleum Reprocessors Superfund Site (Site). EPA will consider public comments on the proposed settlement until March 3, 2004. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from:

Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Paula V. Batchelor at the above address within 30 days of the date of publication.

Dated: January 21, 2004.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information, Management Branch, Waste Management Division.

[FR Doc. 04–2066 Filed 1–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7616–7]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act, Uravan Uranium Superfund Site, CERCLA Docket No. CERCLA–08–2004–0004

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notification is hereby given that the United States Environmental Protection Agency proposes to enter into a Settlement Agreement (Agreement) relating to the Uravan Uranium Superfund Site located in Uravan, Montrose County, Colorado. The proposed Agreement is subject to final approval after the comment period. The Agreement resolves Superfund liability for certain costs under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), against UMETCO Minerals Corporation. The Agreement requires UMETCO to pay EPA $125,000 in full satisfaction of EPA's claim for costs incurred and to be incurred in connection with the deletion of the Uravan Superfund Site from the National Priorities List. For thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed Agreement. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado, 80202.

Availability: The proposed Agreement is available for public inspection at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado, 80202. A copy of the proposed Agreement may be obtained from Kelcey Land, Enforcement Specialist, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, ENF–T Denver, Colorado, 80202. Comments should reference the ''Uravan Uranium Superfund Site'' and should be forwarded to Kelcey Land, Enforcement Specialist, at the above address.

FOR FURTHER INFORMATION CONTACT: Andrea Madigan, Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, ENF–L Denver, Colorado, 80202.

Dated: January 15, 2004.

Carol Rushin,

Assistant Regional Administrator, Enforcement, Compliance and Environmental Justice, Environmental Protection Agency, Region VIII.

[FR Doc. 04–2062 Filed 1–30–04; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 60]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before April 2, 2004, to be assured of consideration.

ADDRESSES: Direct all requests for additional information to Jean Fitzgibbon, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3620. Direct all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB Room 10202, Washington, DC 20503, (202) 395–3897.

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers

Application for Quotation—Export Credit Insurance, Commercial Bank Insureds, EIB 92–34.

Beneficiary Certificate and Agreement, EIB–92–37.

Application for a Financial Institution Buyer Credit Policy, EIB 92–41.

Application for Export Credit Insurance Financing or Operating Lease Coverage, EIB 92–45.

Short-Term Multi-Buyer Export Credit Insurance Policy Application, EIB 92–50.

Exporter's Application for Short-Term Single-Buyer Policy, EIB 92–64.

Broker Registration Form, EIB 92–79.

OMB Number: 3048–0009.

Type of Review: Revision and extension of expiration date.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements. The forms encompass a variety of export credit insurance policies.

Affected Public: The forms affect all entities involved in the export of U.S. goods and services, including banks, insurance brokers and non-profit or state and local governments acting as facilitators.

Estimated Annual Respondents: 1,762.

Estimated Time per Respondent: 1 hour.

Estimated Annual Burden: 1,762.

Frequency of Reporting or Use: Applications submitted one time, renewals annually.

Dated: January 23, 2004.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB#3048-0009
Expiry Date 10/31/03

EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR QUOTATION-EXPORT CREDIT INSURANCE
COMMERCIAL BANK INSUREDS
LETTER OF CREDIT (ELC), BANK DEDUCTIBLE (EBD) or
FINANCIAL INSTITUTION SUPPLIER CREDIT (EBS, EBM) POLICIES

THIS DOCUMENT WILL BE A MATERIAL BASIS OF THE INSURANCE IF QUOTATION IS MADE AND ACCEPTED.

1. Applicant Bank:_____ Contact:_____

   Address, include 9 digit Zip Code:_____

   E-Mail_____Fax_____Phone_____

   Tax ID #: _____ DUNS #: _____ Congressional District:_____

2. If you wish us to consider adding subsidiaries, branches or affiliates as Additional Named Insureds under your policy, provide full legal name and address below and answer questions 5. A. (2) or B. (2) for each Additional Named Insured.

Name	Address
_____	_____
_____	_____

3. Name of Brokerage (if any, if none insert *"none"*):_____

   Name of Contact:_____Broker #:_____

   E-Mail_____Fax_____Phone_____

4. Please provide the following information unless you have submitted this information within the past 6 months for Policy No_____:

   A. (I)Rating:_____ Agency:_____ Date:_____, **or**

   (2) a. Annual report, including audited financial statements, on your bank for the past two fiscal years.
   b. The most recent available 10K and 10Q reports on your bank.
   c. Recent (within six months) credit agency report on your bank (otherwise, please attach a check for $35.00).

   B. If you are a foreign bank registered to do business in the U.S., in which state(s) are you licensed to conduct business? How are your operations in this country best described? Does your bank operate as a branch or subsidiary? To what extent are credit decisions made by your bank autonomous of headquarters?

   C. Has your bank or have the individual(s) who will be administering or placing business under this policy ever dealt with Ex-Im Bank before? ? Yes ? No If yes, describe the programs the bank or the individual(s) are familiar with, and the time period

   during which these contacts took place._____

   D. Is there any other information that will be of assistance in evaluating your request for a bank policy? ? Attached

5. A. **For Letter of Credit Policies** (add pages if necessary):

   (1) a. How are the international banking activities in your bank organized functionally? _____

   (2) a. Who are the key individuals involved? _____

   b. Have the individuals involved attended an Ex-Im Bank orientation seminar or an Ex-Im Bank training session? ? Yes ? No
   c. Please provide their resumes. (See resume form attached)
   You must provide notification within 10 days if the individual(s) responsible for administering the policy change.

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(3) a. How long have you been confirming international letters of credit?_____

b. From what countries?_____

(4) Does your bank have any special expertise in particular types of transactions, regions of the world or any other areas?

_____

(5) Maximum value of insured letters of credit expected to be outstanding during the policy period: $_____.

B. **For Financial Institution Supplier Credit** or **Bank Deductible Policies** (add pages if necessary):

(1) Describe how you develop customers for domestic or export receivable financing or factoring.

_____

(2) a. Please identify the individual(s) and administrative area which will be responsible for administering your policy.

_____

b. Have the individuals involved attended an Ex-Im Bank orientation seminar or an Ex-Im Bank training session? ? Yes ? No

c. What experience do the individual(s) identified in 5.B.(2)a.. have with Ex-Im Bank insurance _____or

private sector export credit insurance?_____

d. Please provide their resumes. (See resume form attached)
You must provide notification within 10 days if the individual(s) responsible for administering the policy change.

(3) How many years, and to what dollar amount, have you financed or factored receivables?

	# of years	most recent calendar year amount
Domestic Receivables:	_____	$_____
Foreign Receivables:	_____	$_____

(4) Describe the credit procedures used in deciding to finance an exporter's receivables.

Exporter Analysis:

_____

Buyer Analysis:

_____

(5) a. Maximum value of financed receivables expected to be outstanding during the policy period: $_____

b. For **Financial Institution Suppler Credit Policies** Do you desire (check one) a Documentary Policy ?
a Non-Documentary Policy ?
or both ?

c. After what number of days would you stop financing the exporter's receivables from an overdue buyer? _____

d. How often are financed export receivables monitored? _____

e. Please provide a specimen copy of your lending agreement with exporters for receivable financing or factoring. ? Attached

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6. The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

A. 1) it is a financial institution doing business in the United States, or a jurisdiction thereunder, in accordance with applicable Federal or State banking laws and regulations **OR**
2) it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make this certification.

B. it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

C. (1) neither it nor its principals have been within the past 3 years:
(a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
(b) formally proposed for debarment, with a final determination still pending;
(c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
(2) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
(3) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications (1) (a) through (c) and (2).
It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to (1) (a), (b) or (c) above.

D. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

E. it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

F. (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
(2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine the participants' ability to perform and pay under the Policy.
(3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
(4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
(5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
(6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

G. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

_____	_____	____/____/____
Signature	Print Name and Title	Month/Day/Year

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.

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The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by: ? An Ex-Im Regional Office: _____
? An Ex-Im City/State Partner:_____ ? A U.S. Export Assistance Center: _____
? A Broker:_____ ? A Bank: _____
? A Local Development Authority:_____ ? Other (specify): _____
END

Attachment to Bank Policy Application
To be filled out for each individual named.
RESUME FORM

Name:_____

Title or
Position:_____

Number of years with your organization:_____

Full description of job functions including administering the policy:

_____

_____

_____

_____

Administrative
experience:_____

_____

_____

_____

_____

Export-related experience including any previous experience with Ex-Im Bank:_____

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_____

_____

_____

Educational
background: _____

_____

_____

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Ex-Im Bank Logo

EXPORT-IMPORT BANK OF THE UNITED STATES

BENEFICIARY CERTIFICATE AND AGREEMENT
For Use With
Bank Letter of Credit Export Credit Insurance Policy or
Financial Institution Buyer Credit Export Credit Insurance Policy or
Medium Term Export Credit Insurance Policy

NOTE: This form is to be used only if the beneficiary of the letter of credit, the recipient of a funding under a direct buyer credit loan or the recipient of payment under a reimbursement loan or a payment under a supplier credit is not also the U.S. Exporter. In that situation the exporter must complete those parts of the Exporter Certificate EIB94-07 required in its instructions and the beneficiary must complete this entire certificate.

Name and Address of Policyholder: _____

Name and Address of Beneficiary: _____

Policy No._____

(to be completed by the policyholder, also see No.4.e) Beneficiary's Dun & Bradstreet Number _____

Taxpayer ID No.:_____ Congressional District:_____

Indicate (not required) if owned by a ☐ woman, or an ☐ ethnic minority, describe____

Upon representation that the Export-Import Bank of the United States ("Ex-Im Bank") has issued to the policyholder identified above an export credit insurance policy, and in consideration of either (check one):

☐ a) the payment, acceptance or negotiation of an irrevocable letter of credit in our favor; or,

☐ b) the financing of an export,

We, the Beneficiary, hereby certify to the policyholder and to Ex-Im Bank as follows:

1. The policyholder has either (check one):

☐ a) informed us of an irrevocable letter of credit with Identification No._____ and we have presented, or shall present, documents which are in compliance with the terms and conditions of such irrevocable letter of credit; or,

☐ b) to our belief, established an obligation of the foreign buyer named below to make repayment of funds on a specified term in support of an export, for which we have received payment.

2. The above referenced irrevocable letter of credit **or** the buyer's obligation to pay the policyholder is in support of an export transaction described as follows:

a) Name and address of buyer_____

b) Description and quantity of product(s)/service(s)_____

c) The product(s) are: ☐ New, ☐ Used. If used, attach Used Equipment Questionnaire form EBD-M-25.

d) Place of Shipment_____ e) Date of Shipment_____

f) Contract Price to Buyer:

(i)	Products/Service	$_____
ii)	Less discounts or similar allowances	$_____
iii)	Plus total insurance, freight or other delivery charges included in the transaction	$_____
	Subtotal:	$_____
iv)	Less cash payment	$_____

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(minimum 15% required for MT)
(v) Total final net delivered financed portion $_____

3. To the best of our knowledge and belief, the products described above were **shipped from the United States**, in accordance with paragraph 2 above.

4. With respect to products
a) which could be used for **military** purposes,
b) which could be components of a product or equipment which could be used for military purposes,
c) which could be used to manufacture products or equipment which could be used for military purposes,
d) listed on the United States **Munitions List** (part 121 of Title 22 of the Code of Federal Regulations), or
e) purchased by or for use by security, military or defense organizations, ☐ we ____ have or ☐ the policyholder ____
Initial Initial
has received the written approval of the Ex-Im Bank for such sale prior to shipment of the products **and attached it** to this certificate. Submit a Defense Product Questionnaire EIB92-61 in order to obtain such approval.

5. The products do not consist of technology, fuel, equipment, materials or goods and services to be used in the construction, alteration, operation or maintenance of **nuclear** power, enrichment, reprocessing, research or heavy water production facilities.

6. To the best of our knowledge and belief the products are **for use only in countries** in accordance with Ex-Im Bank' s Country Limitation Schedule in effect on the date of shipment. See Ex-Im Bank's Internet Website <www.exim.gov > Country and Fee Information.

7. Neither we, nor our Principals, have within the past 3 years been:
1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

8. We have not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

9. We will complete and submit **Form-LLL** (the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-0apd.pdf), Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any erson in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

10. We have not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

11. The representations made and the facts stated by us in these certifications and its attachments **are true, to the best of our knowledge and belief, and we have not misrepresented or omitted any material facts**. We further understand that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

By:_____ Signature:_____
Print Name (Authorized Representative of the Beneficiary)

Title:_____ Date:_____

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If the beneficiary can not make any or all of the required certifications as they are presented here, Ex-Im Bank must be contacted to request written permission to delete or alter the certification, without which the insurance policy may not be valid.

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

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EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION for a FINANCIAL INSTITUTION BUYER CREDIT POLICY

(Please Print or Type) APP. NO._____(Ex-Im Bank Use Only)

INSURANCE BROKER: If none, insert "*none*." _____ Broker #: _____

Name of Brokerage: _____ Phone #: _____

Contact Person: _____ Fax #: _____ E-Mail: _____

1. APPLICANT: (Ex-Im use only: Insured #: _____)

Applicant Name: _____ Phone#: _____

Contact person: _____ Fax #: _____

Position Title: _____ E-Mail: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Please attach the following information unless you submitted this information within the past 6 months for Policy No._____.

a. Taxpayer ID #:_____ Duns #:_____ Congressional District:_____ **AND**

b. Market Rating:_____ Rating Agency:_____ Date:_____, **OR**

c. (1) ? Your most recent published annual report, or audited financial statements.

(2) ? Your most recent available 10k and 10Q reports.

(3) ? A credit agency report dated within 6 months. If unavailable, attach check for $35.00 to cover Ex-Im Bank's cost in ordering report.

(4) ? How long have you been lending internationally?

(5) ? To what countries do you actively lend?

(6) ? How is your foreign loan portfolio broken down between government _____% and private _____% sector buyers?

(7) ? How often do you visit your overseas buyers?

(8) ? Attach the manes, titles, and the international lending backgrounds of the individuals responsible for administering Ex-Im policies.

2. TRANSACTION:

a. This insurance application is for, check one, a credit extended by you based on:

your relationship with the Buyer or Guarantor , a ? Buyer Credit, **or**, your relationship with the exporter, a ? Supplier Credit.

b. This application is for ? Comprehensive (Commercial and Political Cover) or ? Political Only Cover.

c. This application is for a ? Single Financing or a ? Revolving Line.

d. Credit limit requested $_____

e. Payment terms requested_____.

f. Ex-Im Bank requires a written debt obligation, i.e., promissory note or draft. If none, check here ? and provide a full description of documentation which constitutes the buyer's debt obligation._____.

g. Indicate whether ? negotiating or ? financing mandate received.

3. BUYER: The "buyer" is the entity which agrees to repay the credit (loan). Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) for Buyers to determine the likelihood of approval:

a. This buyer is ? Sovereign, ? Non-Sovereign Public Sector, or ? Private Sector. (Ex-Im use only: File #: _____)

Buyer Name: _____ Duns #: _____

Contact person: _____ Phone #: _____ Fax #: _____

Position Title: _____ E-Mail: _____

Street Address: _____ City: _____

State/Province: _____ Postal Code: _____ Country: _____

The following information on the buyer is necessary unless the credit is based on a guarantor, if so check here ? and complete for the guarantor

b. For **all applications** provide in an attachment:

(1) ? A summary of credit facilities (insured and uninsured) extended by the ? applicant or the ? exporter (for Supplier Credits) to this

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buyer/guarantor specifying the high credit, whether secured or unsecured, and tenor(s) with details on past dues (if applicable), or ? None.

(2) For ? **non-sovereign public** or ? **private** buyers/guarantors on which comprehensive cover is requested, provide the following:
(a) Market Rating:_____ Rating Agency:_____ Date:_____, **OR**
(b) ? A bank reference not older than 6 months from date of application **and**
(i) ? 2 Ex-Im Bank Trade Reference forms (EIB99-14) dated within 6 months of the application **and**
(ii) ? For a credit limit up to $1 million, the last 2 fiscal year end audited or signed unaudited financial statements with notes.
? For a credit limit over $1 million, provide 3 fiscal year end audited statements with notes and the most recent interim statements with notes if the last fiscal year end is more than 9 months prior to application.
(3) ? The applicant's credit memorandum on the buyer/guarantor.
(4) Have you visited the buyer/guarantor? ? No ? Yes, if yes give date: _____ and attach a copy of your call report.

4. **GUARANTOR:** The "guarantor" is the entity which agrees to repay the credit if the borrower does not. Complete the information below and provide the information in 3.b. if the credit is based on the guarantor. (Ex-Im use only: File #:_____)
This guarantor is ? Sovereign, ? Non-Sovereign Public Sector, or ? Private Sector.

Guarantor Name:_____ Duns#:_____
Contact person:_____ Phone #:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State/Province:_____ Postal Code:_____ Country:_____

5. For **SUPPLIER CREDITS** only:
NOTE: You are **not** required to fill out this section for **Buyer Credits** but, if any information is known, please complete in a, b and c.

a. **EXPORTER:**
The "exporter" is the entity which contracts with the buyer for the sale of the U.S. items and services. (Ex-Im use only: File #:_____)

Exporter Name:_____ Phone #:_____
Contact person:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State:_____ Zip Code:_____
Taxpayer ID #:_____ Duns #:_____ Congressional District:_____
Fiscal year ended (mo. & yr.):_____ Gross sales revenue in last fiscal year: $_____ # of employees:_____
Standard Industrial Code of business:_____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe:_____

If "Documentary" cover is desired, check here ☐and attach the following unless the exporter submitted it within the past 6 months for Policy No._____. Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) Exporter Standards for an Enhanced Assignment to determine the likelihood of approval of documentary cover if the exporter, using the US Small Business Administration guidelines, is a small business.
(1) ☐ A bank reference on the exporter dated within 6 months of the application **and**
(2) ☐ 2 trade references on the exporter dated within 6 months of the application **and**
(3) The last 2 fiscal year financial statements of the exporter as follows:

Claim Payment Limit (Credit Limit x %of cover)	Minimum Requirement
☐ $500,000 or less	signed by an authorized officer of the exporter
☐$500,001 - $999,999	reviewed by a CPA with notes attached
☐$1,000,000 or more	audited by a CPA with opinion and notes attached

NOTE: The net worth, including subordinated shareholder debt, of the exporter must be at least 20% of the Claim Payment Limit.

b. **SUPPLIER:** The "supplier" is the U.S. entity which produces the items and/or performs the services to be exported.
Check if the supplier is also the ☐ exporter or complete the following: (Ex-Im use only: File #:_____)

Supplier Name:_____ Phone #:_____
Contact person:_____ Fax #:_____
Position Title:_____ E-Mail:_____
Street Address:_____ City:_____
State:_____ Zip Code:_____
Taxpayer ID #:_____ Duns #:_____ Congressional District:_____
Fiscal year ended (mo. & yr.):_____ Gross sales revenue in last fiscal year: $_____ # of employees:_____
Standard Industrial Code of business:_____ Indicate (Not Required) if owned by a Woman or Ethnic Minority, describe:_____

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c. **PRODUCTS:** All applicants should note that there are specific United States content requirements for all transactions and that exporters are required to complete an Exporter's Certificate form EIB-94-07 for "Documentary" cover.

(1) Products: ☐ New ☐ Used (If used, complete and attach Used Equipment Questionnaire, EIB-92-63)

(2) Description of products*: _____

(3) Are products listed on the United States Munitions List (part 121 of Title 22 of the Code of Federal Regulations)? ☐ Yes ☐ No

(4) Is each product produced or manufactured in the United States? ☐ Yes ☐ No

(5) Is at least one half of the value, exclusive of price mark-up, exclusively of US origin? ☐ Yes ☐ No

(6) Will any value be added to the products after export from the United States? ☐ Yes ☐ No

If yes please attach an explanation; the transaction may not be eligible for coverage.

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim.gov. There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

6. **PARTICIPANTS:** Describe any direct or indirect ownership or family relationship between any of the participants in this transaction. If none, insert *"none"*. _____.

? the applicant **and** for supplier credits: ? the exporter, or

for buyer credits: ? the buyer and ? the guarantor (if any).

7. **The Applicant** (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

A. 1) it is a financial institution doing business in the United States, or a jurisdiction thereunder, in accordance with applicable Federal or State banking laws and regulations **OR**

2) it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make this certification.

B. it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

C. (1) neither it nor its principals have been within the past 3 years:

(a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or

(b) formally proposed for debarment, with a final determination still pending;

(c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.

(2) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**

(3) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications (1) (a) through (c) and (2).

It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to (1) (a), (b) or (c) above.

D. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:

(1) an officer or employee of any U.S. Government agency, or

(2) a Member of Congress or a Member's employee, or

(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

E. it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

F. (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);

(2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine the participants' ability to perform and pay under the Policy.

(3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);

(4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;

(5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

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(6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

G. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

_____ _____ ___/___/___

Signature Print Name and Title Date

Note: Please respond to all items and sign application. Applications not completely filled out or not submitted with required financial and credit information will be withdrawn.

Send, or ask your insurance broker or city/state participant to review and send, this application to:
Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by: ? An Ex-Im Regional Office:_____

? An Ex-Im City/State Partner:_____ ? A U.S. Export Assistance Center:_____

? Broker:_____ ? A Bank:_____

? A Local Development Authority:_____ ? Other (specify):_____

END

Ex-Im Bank Logo

EXPORT-IMPORT BANK OF THE UNITED STATES
Financing or Operating Lease Coverage
Explanation of Application Form for Export Credit Insurance

THIS EXPLANATION IS GIVEN ONLY FOR THE PURPOSE OF ASSISTING YOU IN REVIEWING THE APPLICATION FORM. THE COMPLETE TERMS AND CONDITIONS OF COVERAGE ARE SET FORTH IN THE POLICY ITSELF. PLEASE NOTE THAT ALL UNDERLINED WORDS IN THIS EXPLANATION AND THE APPLICATION FORM ARE DEFINED IN THE POLICY.

INTRODUCTION - Two Types of Coverage: Operating and Financing Leases

The Export-Import Bank of the United States (Ex-Im Bank) has created two credit insurance policies for the leasing industry, one entitled Operating Lease Policy, and the other Financing Lease Policy. Each provides a unique system of coverage which is described below. It is important to know that the terms operating lease and financing lease are used herein as descriptive titles for the purposes of the policies only. Definitions of an operating lease, true lease, financing or full payout lease vary depending upon whether one is speaking in the context of accounting, taxes, commercial law, or international trade. These definitions do not affect your choice between the two Ex-Im Bank policies. The choice between the Operating Lease Policy or Financing Lease Policy depends upon the characteristic of the transaction. The Finance Lease Policy must be used if the transaction is essentially a conditional sale and the intent of the lessor is to transfer title at the end of the lease period. Usually there is no or little residual value. The Operating Lease Policy must be used if the transaction is not essentially a sale, but involves the rental concept (i.e, the lessor does not intend to transfer title to the lessee at the end of the lease period). Usually there is a significant residual value. All transactions which have residual value greater than or equal to 25% of the full value of the leased products must use the Operating Lease Policy.

The separation between the two types of coverage is due in part to the necessities of compliance with certain international agreements pertinent to medium-term sales. For those purposes, the financing lease is viewed as a medium-term sale and therefore an advance payment from the lessee to the lessor is required. An operating lease, however, which embodies the expectation of repossession of a leased product, which product may or may not have retained its expected market value, can be viewed by Ex-Im Bank as a rental and thereby can be underwritten by Ex-Im Bank without the imposition of an advance payment requirement.

Coverage is made available for leased products of United States origin as defined by the current underwriting guidelines. Used products may be covered. Refer to Ex-Im Bank's Fact Sheet on Used Equipment Guidelines EIB92-63. Lessors may be located in the United States, the country where the lessee is located, or a third country. Coverage is available for products which have been previously exported from the United States, however, products which have been exported as a sale or financing lease must be returned to the United States for at least one year to be eligible for coverage. Products which have been exported under an operating lease must also be returned to the United States but there is no minimum repatriation period required.

STRUCTURE OF EX-IM BANK'S FINANCING LEASE POLICY

Similar to the structure of a medium-term sale transaction, there is a requirement of a 15% advance payment from the lessee to the lessor (applicant/insured) on or before the delivery of the leased products. The advance payment may be financed. You can only insure the remaining 85% of the lease transaction.

Should the lessee default, coverage is provided for the insured percentage of each lease payment as it falls due until the end of the lease term. Coverage is usually provided at 100%. At the time of claim payment, the insured is obligated to transfer to Ex-Im Bank all remaining obligations of the lease, as well as title to the leased products. The coverage of lease payments as they become due remains effective regardless of failed repossession efforts for any reason or Ex-Im Bank's own subsequent repossession of a leased product which has lost its market value.

STRUCTURE OF EX-IM BANK'S OPERATING LEASE POLICY

Coverage for Stream of Payments During Repossession Efforts - This policy divides coverage into two distinct parts, the first being for the stream of payments which fall due during a limited repossession efforts period after default of the lessee. Although the length of the repossession efforts period will be underwritten on a case-by-case basis, it will generally extend to cover those periodic and approved non-periodic payments which fall due during a maximum period of five months after the default. The intention of this first coverage is to maintain the insured's stream of payments while he takes action to repossess the leased products. Coverage for the stream of payments is usually provided at 100% for sovereign lessees and 90% for all others.

Coverage for Governmental Prevention of Repossession - If the insured has elected to purchase this coverage and is unable to effect repossession during the repossession efforts period, he may then claim under Risk 5 coverage, but only if repossession is prevented by the type of government action specifically described under Risk 5 of the Operating Lease Policy. Generally, those risks are referred to as expropriation or confiscation. Coverage will be limited to the actions of the governments of those countries which the insurer agrees to specify in the declarations. A failure of the insured to effect repossession for reasons other than those specified in Risk 5 is not covered. Note that the valuation of coverage under Risk 5 is the fair market value of the leased products at the time of claim submission. The coverage percentage under Risk 5 is 100%.

POLICY ISSUANCE

Both the Operating Lease Policy and Financing Lease Policy are of the single transaction type, meaning that a separate policy is issued for each separate lease you insure with Ex-Im Bank. Upon the review and approval of your application, Ex-Im Bank will issue a commitment notice for 90 days, reflecting the coverage parameters, including the credit limits and premium due, for your lease transaction. The policy is issued once you pay the applicable premium which is due prior to the expiration of the commitment notice.

The Operating Lease Policy offers "limits" type coverage:

> Under Risks 1, 2, 3, 4 on the stream of payments, you may purchase an amount of insurance up to the credit limit which Ex-Im Bank has approved, or less, if you deem it appropriate. Ex-Im Bank's maximum claim payment for these risks would be the insured percentage of the loss up to the lesser of the actual amount of the limited number of periodic and non-periodic payments specified in the policy declarations or the coverage credit limit you have purchased.
>
> In a similar manner, for Risk 5, you may purchase an amount of insurance up to the credit limit which Ex-Im Bank approves, or less if you desire, to cover the value of the leased products should their repossession after a default be prevented by one of the forms of governmental intervention set forth in the policy. Under Risk 5, the claim payment would be the insured percentage of the fair market value at the time of claim, but limited by the credit limit of coverage you have purchased.
>
> Note that prior to the time of policy issuance you must make the final decision on your credit limits, taking into consideration whatever factors you choose, including the possibilities that a default and prevention of repossession may occur very early during the life of the lease.

Under the Financing Lease Policy, Ex-Im Bank's maximum claim payment for Risks 1, 2, 3, 4 would be the insured percentage of the amount of the insured's loss on approved non-periodic payments and on the principal and covered

interest of each actual periodic payment as set forth on the schedule in the policy declarations.

FURTHER POINTS OF CLARIFICATION

- Ex-Im Bank coverage under both the Operating and Financing Lease Policies is available for both the rental portion of the lease, which is referred to as periodic payments, and also other non-rental type payments, referred to as approved non-periodic payments. Periodic payments must be due from the lessee to the insured under the lease at equal time periods, but the amounts of such payments may be unequal.

- The concept of a non-periodic payment is intended to include those payments which are obligations of the lessee under the lease, but for which payment is due upon the occurrence of certain specified contingencies other than the passage of equal periods of time. Such obligations might include service or maintenance payments payable by the lessee to the insured lessor. If such non-periodic payments are payable to a third party, however, they can be insured only if the lease contains an obligation of the lessee to reimburse the insured if such payments are not made to the third party by the lessee when due and are instead made by the insured. Your application for coverage of such non-periodic payments will be underwritten by Ex-Im Bank, and a credit limit will be entered for each approved non-periodic payment.

- Both policies require that the lease documentation set forth certain obligations. Before Ex-Im Bank can realistically underwrite a transaction, it is usually necessary to review at least a draft of the lease documentation prepared for the transaction you wish to insure. That draft should be as complete as possible when submitted.

POLICY RISK TYPES

Risks 1, 2, 3 - political risks of non-payment
(currency inconvertibility, cancellation of export or import licenses, war, insurrection, requisition or expropriation)

Risk 4 - commercial risk of non-payment
(protracted default, insolvency)

Risk 5 - governmental prevention of repossession of leased products (expropriation, confiscation - applicable to Operating Lease Policy only)

Information about Ex-Im programs, the materials and forms mentioned in these Instructions and the Application, names of Credit Reporting and Rating Agencies may be obtained:
- from Ex-Im's Website <http://www.exim.gov> ,
- by calling an Ex-Im Regional Office: Midwest: Chicago (312) 353-8081, Northeast: New York (212) 809-2650, Southeast: Miami (305) 526-7436, Southwest: Houston (281) 721-0465, MidAtlantic: Washington,DC (202) 565-3902, West: Los Angeles (562) 980-4580, Orange County (949) 660-1688ext150, San Francisco (415) 705-2285,
- by calling the Ex-Im Business Development Division 1-800-565-EXIM (3946), or
- at 811 Vermont Avenue, NW, Washington, D.C. 20571.

A **non-binding insurance premium quote** can be determined using the Website's Exposure Fee Calculator.

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EXPORT-IMPORT BANK OF THE UNITED STATES
APPLICATION FOR EXPORT CREDIT INSURANCE
FINANCING OR OPERATING LEASE COVERAGE

Date:_____
App. No.:_____
(Ex-Im Bank Use Only)

(Please Print or Type)

1. Applicant Name and Address, use 9 digit zip code	2. Broker Name and Number
Attn.: Telephone No.: Fax No.: E-Mail:	(If none, state "None") Brokerage: Broker No.: Attn.: Tel No.: Fax No.: E-Mail:

3. Lessee Name and full Address
(If mailing address is a P.0. Box, also provide street address)

File No.:_____
(Ex-Im Bank Use Only)

4. Guarantor Name and Address (If none, state "None")

File No.:_____
(Ex-Im Bank Use Only)

(Please complete Parts I, II, III, IV and V for prompt processing of your request.)

PART I -- INFORMATION ABOUT THE APPLICANT

5. Please attach the following information

- Your most recent published annual report or financial statements (balance sheet and income statement) signed by company officers. If on file, please indicate. ☐

- Recent (within 12 months) credit agency report on applicant. If unavailable, please attach check for $35.00 to cover the Export-Import Bank of the United States' (Ex-Im Bank's) cost in ordering a report. If you have submitted this report or $35.00 to Ex-Im Bank during the past 12 months, please indicate and the requirement will be waived. ☐

6. Nature of business (e.g., manufacturer, independent leasing company, leasing subsidiary of a bank, etc.):

7. Years engaged in: a) Leasing within your country_____ b) Leasing outside your country _____

8. a) Total leases and sales during the current and past two years:_____ _____ _____

Within your country	$_____	$_____	$_____
Outside your country	$_____	$_____	$_____

b) Total Employees:_____ c) Standard Industrial Classification (SIC) Code (if known):_____

d) Tax ID #:_____ e) DUNS #: _____ f) Congressional District:_____

7) Indicate (Not Required) if owned by a ☐ woman, or an ☐ ethnic minority, describe_____

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9. What are your principal foreign markets?

10. Principal products leased (including identification of major suppliers if other than applicant):

PART II - INFORMATION ABOUT THE TRANSACTION

11. Check one: ___ Firm Lease ___ Negotiating Lease ___ Responding to Invitation to Bid

12. Total value, term and schedules of payments under the lease:

(Attach a copy of the final lease if available, or a draft copy setting forth at least those provisions required by the policy.)

13. Leased products ___New ___ Used (If used, attach Used Equipment Questionnaire.)

a. Specify quantity, serial no., model no., year of manufacture, fair market value per unit and how derived, and a description of what the product does.

b. Is there an active market for this particular product model number in the U.S. today, or is this product somewhat obsolete in the U.S. but still in demand overseas?

c. Manufacturer or vendor if other than applicant:_____

d. Is each leased product produced or manufactured in the United States to the extent that at least 85% of the value, exclusive of price mark-up, has been added by labor or material exclusively of U.S. origin? ___Yes ___No

e. Original purchase value $_____

f. Estimated value of leased products at the end of lease term $_____

g. Who will own the leased products at end of lease term?_____

_____

h. Is title of ownership on each of the leased products unencumbered? ___Yes ___No If no, please attach an explanation.

i. Does the lease give you the right to repossess the leased products in the event of default? ___Yes ___ No Identify the reference in the lease regarding repossession.

j. Are products listed on the United States Munitions List? (part 121 of Title 22 of the Code of Federal Regulations) ☐ Yes ☐ No

See the U.S. Dept. of Commerce Website at <http://www.ita.doc.gov/import_admin/records/status> for a list of products and countries with Anti-Dumping or Countervailing Duty sanctions or call Ex-Im's Country Risk Analysis Division at (202) 565-3730.

14. Is the lessee going to be the user of the leased products or are the leased products expected to be released or sold to another entity? ____ Yes ____ No, if no, identify the entity and its location: _____.

15. Have you ever had to repossess products sold to or leased into the lessee's country? ___Yes ___ No

a. If yes, were you successful in your repossession? ___Yes ___ No

b. If you have repossessed products in the lessee's country, where did you resell or release them?

16. What procedures or measures (i.e., conforming with local documentation requirements and standard government regulations) have you undertaken to assure:

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a. that you maintain good title to the leased products in the country of the lessee in this transaction?

b. that you will be able to repossess and re-export the leased products?

17. Does the lease establish an unconditional obligation of the lessee to make non-cancelable:

a. periodic payments?___Yes ___ No

b. non-periodic payments?___Yes ___ No

18. Shipment of leased products will begin on or before_____(Date).

19. Other insurance:

a. Ex-Im Bank requires that you be loss payee for transit insurance for the actual cash value of the leased products at the time of shipment. Has transit insurance been obtained or is it being obtained? ___Yes ___No

(i) For what actual cash value? _____

(ii) With which carrier? _____

(iii) Effective dates: from _____ to _____

b. Ex-Im Bank requires that casualty insurance on the actual cash value of the leased products be maintained at all times. Has casualty insurance naming you as loss payee been obtained or is it being obtained? ___Yes ___No

(i) At what time periods will you require a certification of casualty insurance from the lessee?

PART III - POLICY SELECTION INFORMATION (Refer to "Explanation of Application" form)

☐ Financing Lease Policy (Answer only questions 20 and 21)

☐ Operating Lease Policy (Answer only questions 22, 23 and 24)

FOR FINANCING LEASE POLICY

20. a. Contract price of the leased products $_____

Advance payment (minimum 15%) $_____

Credit Limit for Principal amount of periodic payments $_____

b. Repayment terms for periodic payments
___Monthly ___Quarterly ___Semi-Annually in_____ installments beginning_____
(number)

c. Attach as "Exhibit A" a schedule of periodic payments breaking out the principal amounts and interest for each periodic payment.

d. Do you wish to insure any non-periodic payments? ___Yes ___No

If yes, please specify the credit limit requested and provide a description (including reference to the lease provision) of what each payment is for.

21. Against the actions of the government of which countries do you wish insurance under Risks 2 and 3?

FOR OPERATING LEASE POLICY

22. Repossession

At what point after default do you contemplate beginning repossession on this transaction and how much time do you estimate will be required for a successful repossession?

23. What is the length of the repossession efforts period you wish to insure?

24. a. Requested credit limit for periodic payments coming due during the requested repossession efforts period

$_____

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b. Attach as "Exhibit A" the schedule of periodic payments

25. Do you wish to insure any non-periodic payments? ___Yes ___No
If yes, please specify the credit limit requested and provide a description (including reference to the lease provision) of what each payment is for.

26. Do you desire coverage for the risk of prevention of repossession ("Risk 5") of the leased products? ___Yes ___No
Credit Limit of fair market value you wish to insure under Risk 5: $_____
(Risk 5 premium rates will be applied to this amount only.)

27. Against the actions of the government of which countries do you wish insurance under Risks 2, 3, and 5?

PART IV - INFORMATION ABOUT THE LESSEE

28. Please attach the following information:

- Credit reports on the lessee, and guarantor (if any) not older than one year from date of application.

Please provide one report from one of the sources listed in Column A and one from Column B.

Column A	Column B
__ U.S. Commercial Bank	__ Domestic Credit Agency
__ Foreign Commercial Bank	__ Foreign Credit Agency

- Minimum two years signed financial statements (preferably audited and in English) on the lessee, and guarantor (if any). Three years financial statements may be required by Ex-Im Bank on certain requests. Your internal credit analysis can be submitted with this application.

29. a. Summary of credit experience during the last three years with this lessee including uninsured experience. (Please include any additional information you may consider appropriate.)

Total Leases and Sales each year	$_____	$_____	$_____
Highest Amount Owing during the Period	$_____	$_____	$_____
Payment (Lease) Terms	_____	_____	_____

b. Describe lessee's payment history (check one):
__ No prior experience __ Prompt/Discount __ 1-30 days slow
__ 30 - 60 days slow __ More than 60 days slow

c. Amount now owing $_____ as of_____(Date).

d. Amount now past due (indicate maturity dates and explanation):

30. Describe any direct or indirect ownership interest or family relationship which exists between the applicant and the lessee or guarantor. If none, state "None." _____.

31. U.S. trade references (names/addresses/phone numbers/contacts). Submit copies of current reports if available.

32. Lessee's principal commercial banks (names and addresses):

Please answer all questions and sign the application. Applications not completely filled out or not submitted with at least the following information may be withdrawn:

- Copy of lessee's application (or substitute) to lessor for the lease transaction.
- At least a draft copy of the lease agreement prepared for the transaction you wish to insure.
- Financial statements on the applicant, lessee, and the guarantor (if any).
- Credit reports on the applicant, lessee, and the guarantor (if any).
- "Exhibit A" (schedule of periodic payments you wish to insure).

PART V - The Applicant (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:
A. it is (**check one**):

1) ☐a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or
2) ☐an individual or partnership **resident in** the United States; **or**

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3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**

4) ☐ it has received a **written** of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make statement certifications 1, 2 or 3.

B. The applicant certifies that, to the best of its knowledge and belief, the products and services to be exported in the transaction described in this application are principally for use as indicated below. If, however, the applicant has knowledge or reason to believe that the products will be re-exported from the original lessee's country, please complete item (2):

1) ☐ By the lessee in the country specified above.

2) ☐ If not, name country **where** products will be principally used: _____ and **by whom:** _____.

C. Neither it, nor its Principals, have within the past 3 years been:

1) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Transaction;
2) formally proposed for debarment, with a final determination still pending;
3) indicted, convicted or had a civil judgment rendered against us for any of the offenses listed in the Regulations;
4) delinquent on any amounts due and owing to the U.S. Government or its agencies or instrumentalities as of the date of execution of this certification; or
5) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Transaction despite an inability to make certifications 1) through 4) in this paragraph.

D. It has not and will not knowingly enter into any agreements in connection with the goods and/or services covered by this policy with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Transaction. All capitalized terms not defined herein shall have the meanings set forth in the **Government Wide Non-Procurement Suspension and Debarment Regulations - Common Rule** (Regulations).

E. It will complete and submit **Form-LLL** (the Anti-Lobbying Declaration/Disclosure forms available at http://www.exim.gov/pub/pdf/95-10apd.pdf), Disclosure Form to Report Lobbying if, to the best of our knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:

(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

F. It has not, and will not, engage in any activity in connection with this transaction that is a violation of 1) the **Foreign Corrupt Practices Act of 1977**, 15 U.S.C. 78dd-1, et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), 2) the **Arms Export Control Act**, 22 U.S.C. 2751 et seq., 3) the **International Emergency Economic Powers Act**, 50 U.S.C. 1701 et seq., or 4) the **Export Administration Act of 1979**, 50 U.S.C. 2401 et seq.; nor has it been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

G. The representations made and the facts stated in this application and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001, et. seq.)

_____	_____	___/___/___
Signature	Print Name and Title	Month/Day/Year

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office. The Ex-Im Bank website is <http://www.exim.gov> See "Instructions" Page 3 for whom to contact with questions.

Please complete: The applicant was informed about Ex-Im by:

☐ An Ex-Im Regional Office: _____

☐ An Ex-Im City/State Partner: _____

☐ A U.S. Export Assistance Center: _____

☐ A Broker: _____

☐ A Bank: _____

☐ A Local Development Authority: _____

☐ Other (specify): _____

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the **Export-Import Bank Act of 1945**, as amended (12 USC 635 et. seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform

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and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

The information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) the **Privacy Act of 1974** (5 USC 552a), and the **Right to Financial Privacy Act of 1978** (12 USC 3401), except as otherwise required by law. Note that the Right to Financial Privacy Act of 1978 provides that Ex-Im Bank may transfer financial records included in an application for an insurance policy, or concerning a previously approved insurance policy, to another Government authority as necessary to process, service or foreclose on an insurance policy, or collect on a defaulted insurance policy.

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EXPORT-IMPORT BANK of the UNITED STATES

EXPORT IMPORT BANK OF THE UNITED STATES
SHORT-TERM MULTI-BUYER EXPORT CREDIT INSURANCE POLICY APPLICATION

Applicant: _____ **dba:** _____
Contact: _____ Title: _____ Website: _____
Address: _____
Phone: _____ Fax: _____ E-Mail: _____
Indicate (Not Required) if owned by a • Woman or • Ethnic Minority, describe: _____
Bank credit line (if any) with: _____ Broker: _____

1. How did you learn about Ex-Im Bank? ☐ Ex-Im Bank regional office ☐ Broker ☐ Bank ☐ US Export Assistance Center ☐ Ex-Im Bank City/State Partner _____ ☐ Other_____

2. Have you ever applied for a U.S. Small Business Administration or Ex-Im Bank program? ☐ Yes or ☐ No
If so, please name the agency, program, outcome and status: _____
If you wish to insure sales made by your affiliates, please see Question 17 (Additional Named Insureds) prior to continuing.

3. Primary reason for application: ☐ risk mitigation ☐ financing ☐ extend more competitive terms

4. Policy Aggregate Limit Requested: $_____ (maximum export credit receivables outstanding at any one time)

5. Product and/or services to be exported: _____

6. Are the products* to be covered under the policy:
   - Manufactured in the U.S. with a minimum of 51% U.S. content (excluding mark-up)? ☐ Yes or ☐ No
   - Manufactured by the applicant? (If no, provide a list of suppliers with addresses.) ☐ Yes or ☐ No
   - Shipped from the United States to your buyers? ☐ Yes or ☐ No
   - Listed on the U.S. Munitions List (part 121 of title 22 of the Code of Federal Reg.)? ☐ No or ☐ Yes
   - Used? (If yes, please attach Used Equipment Questionnaire EBD-M-25) ☐ No or ☐ Yes

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim..gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

7. # of years exporting: _____ # of years exporting on terms other than cash in advance (CIA) or confirmed L/C (CILC):_____

8. Total export sales for the prior 2 years: Year: _____ $ _____ Year: _____ $ _____
Total export *credit* sales (exclude CIA, CILC) for the prior 2 years: $ _____ $ _____

9. Buyer Types: ____% Manufacturers ____% Wholesalers/ Distributors ____% Retailers ____% End-users

10. Export Credit Portfolio - attach additional pages if necessary.

	PREVIOUS YEAR			PROJECTIONS FOR NEXT YEAR		
Country	**# of Buyers**	**Sales**	**Payment Terms**	**# of Buyers**	**Sales**	**Payment Terms**
EXAMPLE: Mexico	10	$2,500,000	50% CILC 50% 60 day OA	12	$3,000,000	100% 60 day OA

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11. Please list your 5 largest export buyers:

Buyer Name	City/Country	Last 12 Months Sales	Payment Terms	Credit Limit Needed
		$		$
		$		$
		$		$
		$		$
		$		$

12. Name(s) of export credit decision maker(s): Title(s): Years of Credit Experience Years of Foreign Credit Exp.

_____ _____ _____ _____

_____ _____ _____ _____

13. At what point do you stop shipping to a past due account? _____ days past due

14. Total export receivables outstanding: $_____ at ____/____/____ (date should be within 60 days of the application)

$_____	$_____	$_____	$_____	$_____
Current	1-60 days past due	61-90 days past due	91-180 days past due	181+ days past due

For each buyer over 60 days past due, attach an explanation including: name of buyer, country, amount past due, due date, and collection efforts made.

15. Export credit losses per year or rescheduled debts during each of last three years - attach additional pages if necessary.

YEAR	AMOUNT (US$)	EXPLANATION OF LOSS OR RESCHEDULING (SPECIFY REASON, COUNTRY, AND BUYER)
	$	
	$	
	$	

16. **Please submit the following as Attachments:**
- Credit Report on your company dated within 6 months of the application or attach a check for $35 payable to Ex-Im Bank.
- Your financial statements for the two most recent completed fiscal years (with notes if available).
- Resume(s) on each credit decision maker identified in question 12.
- Descriptive product brochures (if available).

17. **Special Coverages Required:** If "none" check ☐ N/A

☐ **Add Additional Named Insureds (ANI's).** Credit decisions of each affiliate listed must be centralized with the Applicant and each affiliate must invoice export credit sales in their own name (or tradestyle); if either is not applicable, please attach an explanation. Questions 3-15 should include export sales of prospective ANI's.

Affiliate Company / Trade style	City / State / Country	Relationship to Applicant

☐ **Services (Please attach a copy of your sample services contract)** Services must be: performed by U.S. based personnel or those temporarily domiciled overseas, and billed (invoiced) separately from any product sales.

☐ **Enhanced Assignment** of small business insurance policy proceeds. This is exporter performance risk protection that may be offered to lenders willing to finance Ex-Im Bank insured receivables. **Applicant Please Attach:**
- Written bank reference describing your relationship to date and size of existing credit line.
- 2 written trade references from principal commercial suppliers.
- For applications with policy limits over $500,000, financial statements must be audited or CPA reviewed with notes.

☐ **Other** (please specify): _____

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The Applicant (it) CERTIFIES and ACKNOWLEDGES to the Export-Import Bank of the United States (the Bank) that:

a) it is either organized, or registered to do **business, in the United States**.

b) it and each additional named insured applicant **has not entered into any contract of insurance** or indemnity in respect of any case of loss covered by the Export Credit Insurance Policy or Loss chargeable to a deductible under such Policy, and the applicant will not enter into any such contract of insurance or indemnity without the Bank's consent in writing.

c) neither it nor any of its principals is currently, nor has been within the preceding three years:

- debarred, suspended or declared ineligible from participating in any Covered Transaction or
- formally proposed for debarment, with a final determination still pending;
- voluntarily excluded from participation in a Covered Transaction; or
- indicted, convicted or had a civil judgment rendered against it

for any of the offenses listed in the Regulations governing Debarment and Suspension as defined in the Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule 53 Fed. Reg. 19204 (1988). It further certifies that it has not nor will it knowingly enter into any agreement in connection with this Policy with any individual or entity that has been subject to any of the above.

d) it is not delinquent on any amount due and owing to the U.S. Government, its agencies, or instrumentalities as of the date of this application.

e) it shall complete and submit standard form-LLL, "Disclosure Form to Report Lobbying" to the Bank (31 USC 1352), if any funds have been paid or will be paid to any person for influencing or attempting to influence i) an officer or employee of any agency, ii) a Member of Congress or a Member's employee, or iii) an officer or employee of Congress in connection with this Policy. This does not apply to insurance broker commissions paid by the Bank.

f) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

h) the information is being requested under the authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.); disclosure of this information is mandatory **and failure to provi de the requested information may** result in the Bank being unable to determine eligibility for the Policy. The information collected will be analyzed to determine the ability of the participants to perform and pay under the Policy. The Bank may not require the information, and applicants are not required to respond, unless a currently valid OMB control number is displayed on this form. The information collected will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed pursuant to applicable law. The **public burden** reporting for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send **comments** regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

i) the representations made and the facts stated in the application for said Policy are true, to the best of it's knowledge and belief, and it has not misrepresented or omitted any material facts relevant to said representations. It agrees that this application shall form a part of the Policy, if issued, and the truth of the representations and facts, and performance of every undertaking in this application shall be a condition precedent to any coverage under such Policy. It further understands that this certification is subject to the penalties for fraud against The U.S. Government (18 USC 1001).

(Signature) (Print Name and Title) (Date)

SMALL BUSINESS POLICIES APPLICANT CERTIFICATION

"We are an entity which **together with our affiliates** had **average annual export credit sales** during our preceding two fiscal years not exceeding **$5,000,000**, excluding sales made on terms of confirmed irrevocable letters of credit (CILC) or cash in advance (CIA)."

(Signature)

Send, or ask your insurance broker or city/state participant to review and send this application to the Ex-Im Bank Regional Office nearest you. Please refer to Ex-Im Bank's website at http://www.exim.gov for Regional Office addresses.

Ex-Im Bank reserves the right to request additional information upon review of the application. Please refer to Ex-Im Bank's Short Term Credit Standards (EIB 99-09) to determine the likelihood of approval of a policy.

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EXPORT-IMPORT BANK OF THE UNITED STATES
EXPORTER'S APPLICATION FOR SHORT-TERM SINGLE-BUYER POLICY App No.:_____
(Please Print or Type) (Ex-Im Bank Use Only)

1. Applicant		2. Broker (If none, state "None")	
Name:		Brokerage:	Broker Number:
Address:		Attn.:	Tel No.:
Attn.:	Tel No.:	Fax No.:	E-Mail:
Fax No.:	E-Mail:		

3. Qualification for Coverage. Will the applicant: a) Have title to the products at the time they are shipped? ☐ Yes ☐ No
b) Be directly invoicing the Buyer? ☐ Yes ☐ No
(If you answered no to either you may not be eligible for coverage. Consult your broker, City/State Program participant or Ex-Im)

4. Buyer Name and (full) Address (no Post Office Box nos.) File No.:_____
(Issuing Bank for Letter of Credit transactions) (Ex-Im Bank Use Only)

5. Guarantor Name and Address (If none, state "None") File No.:_____
(Ex-Im Bank Use Only)

PART I - INFORMATION ABOUT THE APPLICANT Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09)Exporter for New Policyholder to determine the likelihood of approval.

6. If you have submitted this information within the past twelve months provide the policy no._____; otherwise attach the following:
a) Your SIC Code (if known)_____ b) Total Employees_____c) Total Sales_____
d) Tax ID #: _____ e) DUNS #: _____ f) Congressional District:_____
g) Indicate (Not Required) if owned by a ☐ Woman, or an ☐ Ethnic Minority, describe_____
h) ☐ Credit agency report dated within 6 months of the application. If unavailable, please attach check for $35.00 to assist in covering Ex-Im Bank's cost in ordering a report.

	Year ____	____
i) Total export sales	$_____	$_____
j) Total export sales (excluding cash in advance and confirmed irrevocable letter of credit transactions) during your last 2 fiscal years:	$_____	$_____

k) Years exporting on credit terms:_____
l) ☐ Attach the collection procedures your company follows in the event your foreign customers become past due.

7. What is your primary reason for applying for this policy? ☐ Risk mitigation ☐ To obtain financing ☐ Other attach explanation.

8. Have you applied for, or received the benefit of, a U.S. Small Business Administration or Ex-Im Bank program such as a Working Capital Loan Guarantee or Insurance Policy approval? (Enhanced Assignments are not available to exporters benefitting from an Ex-Im Bank or US Small Business Administration Working Capital Loan Guarantee) ☐ No ☐ Yes (describe agency, program outcome and status):_____.

9. If requesting an "Enhanced Assignment" check here and attach the following (refer to Ex-Im Bank's Short Term Credit Standards EIB99-09 Exporters for Enhanced Assignments to determine the likelihood of approval):
☐ A bank reference dated within 6 months of the application.
☐ 2 trade references dated within 6 months of the application.
☐ Financial statements as follows:

Limit of Liability	Minimum Requirement
$500,000 or less	signed by an authorized officer for the applicant
$500,001 - $999,999	reviewed by a CPA with notes attached
$1,000,000 or more	audited by a CPA with opinion and notes attached.

PART II - INFORMATION ABOUT THE TRANSACTION

10. Check one: ☐ Firm Order ☐ Negotiating Sale ☐ Responding to Invitation to Bid

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11. a) Products ☐ New ☐ Used (If used, attach Used Equipment Questionnaire)
b) Name and Description of Products*: _____.
c) Is each product produced or manufactured in the United States? ☐ Yes ☐ No If no explain: _____.
d) Has at least one-half of the value, exclusive of price mark-up, been added by labor or material exclusively of United States origin? ☐ Yes ☐ No If no, explain: _____.
e) Will any value be added to the product after export from the U.S.? ☐ No ☐ Yes If yes, explain: _____
f) Are products listed on the United States Munitions List? (Part 121, Title 22, Code of Federal Regulations) ☐ Yes ☐ No
g) Has this transaction been considered by any other export credit insurer? ☐ No ☐ Yes If yes, attach an explanation.

* Note: The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim.gov . There may not be trade measures against them under Section 201 of the Trade Act of 1974, see http://dockets.usitc.gov/eol/public/ click on 201. There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see http://205.197.120.60/oinv/sunset.nsf/AllDocID/96DAF5A6C0C5290985256A0A004DEE7D.

12. **SUPPLIER.** The "supplier" is the U.S. entity which produces the items and/or performs the services to be exported.
Check if the supplier is also the exporter or complete the following: (Ex-Im use only: File #: _____)

Supplier Name: _____ Phone #: _____
Contact person: _____ Fax #: _____
Position Title: _____ E-Mail: _____
Street Address: _____ City: _____
State: _____ Zip Code: _____
Taxpayer ID #: _____ Duns #: _____ Congressional District: _____
Fiscal year ended (mo. & yr.): _____ Gross sales revenue in last fiscal year: $ _____ # of employees: _____
Standard Industrial Code of business: _____ Indicate (Not Required) if owned by a ☐ Woman or ☐ Ethnic Minority, describe: _____

13. a) **Payment terms** requested _____
b) Debt instrument (if any) _____
c) Expected frequency of shipments: ☐ Single shipment ☐ Multiple shipments under one sales contract.
d) If single shipment, the expected date of shipment _____, or
if multiple shipments, the period required to make shipments from _____ to _____
e) Total shipment volume to be insured $ _____
f) If multiple shipments, the expected highest amount outstanding during shipment period $ _____
g) Other security/guarantees available. If none, state "None". _____.
14. Coverage type required: ☐ Commercial/Political ☐ Political Only
15. Pre-shipment Coverage (complete only if coverage is requested) **NOTE:** Additional premium will be charged for this cover.
a) Has contract of sale been executed? ☐ Yes ☐ No Date or estimated date: _____
b) Estimated period between date of contract and final shipment date of products: _____
c) Attach schedule of any progress payments made or to be made by buyer during pre-shipment period or ? None.
d) What risk is of primary concern to you during the pre-shipment period? _____

PART III - INFORMATION ABOUT THE BUYER Refer to Ex-Im Bank's Short Term Credit Standards (EIB99-09) Buyers: for Financial Institutions, letter of credit transactions, for Financial Institutions non-letter of credit transactions, and for Non-Financial Institution Buyers to determine the likelihood of approval. Attach the following information:

16. a) Market Rating: _____ Rating Agency: _____ Date: _____ **OR**
b) ☐ A credit report on the buyer, and guarantor (if any) not older than 6 months from date of application **and**
☐ 2 (1 if the credit limit is $100,000 or less) Trade Reference forms (EIB99-14) dated within 6 mos of the application **and**
☐ If the credit limit is $300,001 or more, audited or unaudited signed financial statements with notes on the buyer, and guarantor (if any) for the last: 2 fiscal years if the credit limit is $300,001 to $1million, or
3 **audited** fiscal years if the credit limit is $1,000,001 or more.
(Credit and financial information should be on the issuing bank if terms are letter of credit)
17. When did you last visit the buyer? _____
18. a) Summary of credit experience (insured and uninsured) with this buyer during current year and past 2 years:

	___	___	___
Total Sales Each Year	$_____	$_____	$_____
Highest Amount Outstanding During Period	$_____	$_____	$_____
Payment Terms	_____	_____	_____

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b) Describe buyer's payment history (check one)
☐ No prior experience ☐ Prompt/Discount ☐ 1-30days slow ☐ 31-60days slow ☐ More than 60 days slow

c) Amount now owing $_____ as of_____ (Date).

d) Amount now past due (indicate maturity dates and explanation)._____

e) If past dues are due to foreign exchange problems, does applicant have evidence of local currency deposits on all payments due? ☐ Yes ☐ No Not applicable.

19. Describe any direct or indirect ownership interest or family relationship which exists between the applicant and the buyer or guarantor. If none, state "None."_____.

21. **PART IV** **The Applicant** (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

a) it is (**check one**): (1) ☐ a corporation organized and **existing under the laws of the United States**, or a jurisdiction thereunder, or
(2) ☐ an individual or partnership **resident in** the United States; **or**
(3) ☐ a foreign corporation, partnership or individual **registered to do business in** the United States, **OR**
(4) ☐ it has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1, 2 or 3.

b) to the best of its knowledge and belief, the products and services to be exported in the transaction described in this application are principally **for use as indicated below**. When a sale is made to entities such as distributors primarily for resale, the principal user is considered to be the original purchaser (the distributor), and item (1) should be checked. If, however, it has knowledge or reason to believe that the products will be re-exported from the original buyer's country, please complete item (2): (1) ☐ By the buyer in the country specified above. (2) ☐ If not, name the country (ies) **where** products will be principally used: _____ **by whom**: _____.

c) it undertakes to carry on its business with due care in financing exports hereunder, and in regard to the conditions of the contract and the trustworthiness of the exporter and buyer.

d) (1) neither it nor its principals has been within the past 3 years:
(a) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
(b) formally proposed for debarment, with a final determination still pending;
(c) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
(d) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**
(2) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications a through d..
It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to a, b or c above.

e) it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
(1) an officer or employee of any U.S. Government agency, or
(2) a Member of Congress or a Member's employee, or
(3) an officer or employee of Congress. *This does not apply to commissions paid by the Bank to insurance brokers.*

f) it has not, and will not, engage in any activity in connection with this Policy that is a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC Sec. 78dd-1, et seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business. To the best of its knowledge, the performance by the parties of their respective obligations covered or to be covered under this Policy does not and will not violate any applicable law.

g) (1) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);

(2) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Policy. The information provided will be reviewed to determine if the participants' ability to perform and pay under the Policy.

(3) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);

(4) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;

(5) transfer of financial records included in this application to private parties or another U.S. Government authority will not be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).

(6) the **public burden** reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

h) the representations made and the facts stated by it in these certifications and its attachments **are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts**. The applicant agrees that such representations and facts shall form the basis of and be incorporated in the Policy, if issued, and that the truth of such representations and facts and the due performance of each and every undertaking contained herein above shall be condition precedent to any liability of Ex-Im Bank thereunder. It further understands that these

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certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

_____	_____	_____
(Signature)	(Print Name and Title)	Date

Send, or ask your insurance broker or city/state participant to review and send, this application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office. The Ex-Im Bank website is <http://www.exim.gov>

Please complete: The applicant was informed about Ex-Im by: ☐ An Ex-Im Regional Office:_____ ☐ An Ex-Im City/State Partner:_____ ☐ A U.S. Export Assistance Center:_____
☐ A Broker:_____ ☐ A Bank:_____
☐ A Local Development Authority:_____ ☐ Other (specify):_____

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EXPORT-IMPORT BANK OF THE UNITED STATES (EX-IM BANK)
BROKER REGISTRATION FORM

Insurance brokers and agents are eligible for commission payments under Ex-Im Bank export credit insurance policies if the broker or agent is registered with Ex-Im Bank and is appointed as broker-of-record by the policyholder either by designation on an insurance policy application or by separate letter.

Name of Brokerage:_____

Contact:_____ Title:_____

Address:_____ PO BOX:_____

City:_____ State:_____ Zip:_____

Phone: (____)_____ Fax: (____)_____ E-mail:_____

Tax ID #:_____ DUNS #:_____ No. of Employees:_____

Indicate (Not Required) if owned by a ☐ woman or ☐ an ethnic minority, describe_____.

Other lines of brokered insurance:_____.

Do you have other offices you wish to register (to be eligible for commissions)? ☐ No ☐ Yes
If "Yes", please list firm's name, address, telephone number, fax number and contact person on a separate sheet.

A list of registered insurance brokers is available on the Ex-Im Bank Internet Website and unbrokered applicants are referred to the list. Please indicate here if you **DO NOT** wish your name released. ☐

1. A Registration Fee of **$85.00** is required, for which you will also receive a copy and updates of the "Ex-Im Bank Users' Guide."
2. You are required to review, understand and **sign** the attached "Standards of Service".
3. Attach a copy of a current, valid insurance brokerage **license** indicating issuance and/or expiry date(s).
4. Forward the attached "Authorization for Automated Deposits" form.

The Broker (it) **CERTIFIES and ACKNOWLEDGES to the Ex-Im Bank** (the Bank) that:

1. a) neither it nor its principals has been within the past 3 years:
   1) debarred, suspended or declared ineligible from participating in or voluntarily excluded from participation in a Covered Transaction or
   2) formally proposed for debarment, with a final determination still pending;
   3) indicted, convicted or had a civil judgement rendered against them for any of the offenses listed in the **Government Wide Nonprocurement Debarment and Suspension Regulations; Common Rule** which defines Covered Transaction.
   4) It certifies that it is **not delinquent** on any amounts due and owing to the U.S. Government, its agencies or instrumentalities as of the date of this application. **OR**

   b) It has received a **written** statement of exception from the Bank and **attached** it to this certification, permitting participation in the transaction despite an inability to make certifications 1 through 4.

   It further certifies that it has not and will not knowingly enter into any agreements in connection with the transaction with any individual or entity that has been subject to 1, 2 or 3 above.

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2. it will complete and submit **Form-LLL**, Disclosure Form to Report Lobbying if, to the best of its knowledge and belief, **any funds have been paid or will be paid** to any person in connection with this application for influencing or attempting to influence:
a) an officer or employee of any U.S. Government agency, or
b) a Member of Congress or a Member's employee, or
c) an officer or employee of Congress.

3. corrupt payments made in connection with Bank supported transactions may be a violation of the **Foreign Corrupt Practices Act of 1977** (15 USC 78dd-1, et. seq.) which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business.

4. a) the information being requested is done so under authority of the **Export-Import Bank Act of 1945** (12 USC 635 et. seq.);
b) providing the information is mandatory. **Failure to do so** may result in the Bank being unable to determine eligibility for the Insurance Program. The information provided will be reviewed to determine if the broker meets the Bank's legislative requirements under the program
c) the Bank may not require the information and applicants are not required to respond unless a currently valid OMB control number is displayed on this form (see upper right of each page);
d) the information provided will be held confidential subject to the **Freedom of Information Act** (5 USC 552) and the **Privacy Act of 1974** (5 USC 552a), except as required to be disclosed under applicable laws;
e) the Bank shall have a right to transfer to another U.S. Government authority any financial records included in this certification or other correspondence as necessary to process, service, foreclose or collect on an insured debt. No other transfer of records to private parties or another U.S. Government authority will be authorized except as permitted under the **Right of Financial Privacy Act of 1978** (12 USC 3401).
f) the **public burden** reporting for this collection of information is estimated to average ½ hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send **comments** regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

5. the representations made and the facts stated by it in these certifications and its attachments **are true, to the best**

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of its knowledge and belief, and it has not misrepresented or omitted any material facts. It further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 USC 1001).

Signature:_____Print Name:_____

Title: _____ Date: _____

Send this application to Attn: Assistant Director for Broker Relations, Insurance Division, Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571 or an Ex-Im Regional Office.
The Ex-Im Bank website is <http://www.exim.gov>

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INSURANCE BROKERS STANDARDS OF SERVICE

1. To act in a professional, reasonable, prudent and forthright manner in all dealings with your client and Ex-Im Bank.

2. To stay knowledgeable about not only Ex-Im Bank export credit insurance but alternatives, including other Ex-Im Bank programs, other U.S. government programs, and private sector products as well, in order to provide the best options to your clients.

3. To educate your clients about Ex-Im Bank's Insurance Program and policies, its' benefits and proper usage.

4. To serve as your clients' primary contact for any questions concerning the policies and the servicing of a policy.

5. To review all applications and issuances of policies, actions under policies, renewals of policies and credit limits, and claims, for timeliness, completeness, accuracy and reasonableness.

6. To review correspondence from Ex-Im Bank with your clients, including quotes and credit limits, to assist them in understanding the coverage and their responsibilities.

7. To assist your clients to comply with the Agreements of the Insured including shipment reports, premium payment and reports of overdue accounts, and to advise Ex-Im Bank of any potential claims.

8. To report policy cancellations and submit a premium reconciliation to Ex-Im Bank.

9. To provide as much assistance to the policyholder as is possible in order to maximize the benefits of the policy.

I have read the above standards, agree that they are reasonable, and will comply with these standards.

I understand and agree that substantial failure by me to comply with these standards could result in withdrawal from the list of registered insurance brokers published by Ex-Im Bank and cancellation of eligibility for commission payments under Ex-Im Bank export credit insurance policies.

_____	_____	_____
Name of Brokerage	Signature of Broker	Date

_____
Print Name

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EXPORT-IMPORT BANK OF THE UNITED STATES

AUTHORIZATION FOR AUTOMATED DEPOSITS (ACH CREDITS)

I hereby authorize the Export-Import Bank of the United States hereinafter called Ex-Im Bank, to initiate credit entries to my [ ] **CHECKING** [ ] **SAVINGS account** ☑ ***(check one)*** indicated below and the depository named below, hereinafter called DEPOSITORY, to credit the same to such account.

DEPOSITORY NAME _____

BRANCH _____

CITY _____ STATE ____ ZIP _____

TRANSIT/ABA NUMBER: [ ][ ][ ][ ] - [ ][ ][ ][ ] - [ ]

ACCOUNT NUMBER: _____

This authority is to remain in full force and effect until Ex-Im Bank has received written notification from me of its termination in such time and in such manner as to afford Ex-Im Bank a reasonable opportunity to act on it.

BROKER NAME _____
(please print)

BROKER NO. _____ TAX ID NUMBER _____

SIGNATURE _____ DATE _____

PLEASE ATTACH A VOIDED CHECK FOR THE ACCOUNT NAMED ABOVE

FOR EX-IM BANK USE ONLY

DATE RECEIVED _____

PROCESSED BY _____

Return to:

Export-Import Bank of the United States
Director - Broker Relations
811 Vermont Avenue, N.W.
Washington, DC 20571

OMB #3048-0009 Expiry Date 5/31/02

EXPORT-IMPORT BANK OF THE UNITED STATES (EX-IM BANK)
BROKER COMMISSION SCHEDULE
FOR EXPORT CREDIT INSURANCE POLICIES

Effective: October 1, 1994

BROKER ELIGIBILITY

Insurance brokers and agents are eligible for commission payments under Ex-Im Bank export credit insurance policies if the broker or agent is **registered** with Ex-Im Bank and is **appointed** as broker-of-record by the policyholder. The policyholder reserves the right to appoint, delete or change the broker of record at any time. Brokers of record are entitled to any commissions due on premiums paid prior to a change in the broker of record.

COMMISSION RATES

Commission rates paid by Ex-Im Bank are based on the type of policyholder to which the policy is issued, as shown in the chart below:

Type of Policyholder	Commission Rate (percentage of premium)
Financial Institutions	**8%**
Exporters	
Small Business	**30%***
Multi-Buyer Policyholders	**12%**
Single-Buyer Policyholders	**10%**
Administrators	
Umbrella Policy	**30%***
Trade Association Policy	**10%**
Lessors	
(whether a financial institution or an exporter)	
Operating Lease Policy	**20%**
Financing Lease Policy	**10%**

*At Ex-Im Bank's discretion, this percentage will increase to 40% for those brokers who meet certain criteria regarding support of small business.

COMMISSION PAYMENTS

- The full amount of all premiums are due at the appropriate lockbox on or before the date specified in the policy. Insurance brokers should not remit premiums "net" of commission.
- Commission payments will be made monthly.
- No commission payments will be made on advance premium.

BROKER CHANGES ON EXISTING POLICIES

Ex-Im Bank policyholders may appoint or change their insurance broker at any time. Insurance brokers appointed after a policy is issued will be recognized on the first day of the next month after the receipt of the policyholder's written notice appointing an insurance broker of record.

Acknowledgment by Ex-Im Bank of a policyholder's appointed insurance broker is made by means of a policy endorsement. Insurance brokers acknowledged by Ex-Im Bank are eligible for commissions with respect to transactions occurring after the effective date of the endorsement.

WHO TO CONTACT: For additional information, please contact a Regional Office or:

EXPORT-IMPORT BANK OF THE U.S., INSURANCE DIVISION
811 VERMONT AVENUE, N.W., WASHINGTON, D.C. 20571
TEL NO (202) 565-3630 or 1-800-565-EXIM FAX NO. (202) 565-3675 INTERNET http://www.exim.gov
Regional Offices: MID ATLANTIC (202) 565-3940 MIDWEST (312) 353-8041
NORTHEAST (202) 466-2950 SOUTHEAST (305) 526-7425
SOUTHWEST (281) 721-0465 WEST: Long Beach (562) 980-4580, San Jose (415) 705-2285

[FR Doc. 04–1947 Filed 1–30–04; 8:45 am]
BILLING CODE 6690–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Program To Build Capacity in Alaska Native Villages To Assess Impact of Releases From Formerly Used Defense Sites; Notice of Availability of Funds

Announcement Type: New.

Funding Opportunity Number: 04081.

Catalog of Federal Domestic Assistance Number: 93.202.

DATES: *Pre-Application Conference Call Date:* February 17, 2004.

Application Deadline: April 2, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under section 104(i)(6), (14), and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i)(6), (14), and (15)].

Purpose: The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2004 funds for cooperative agreements for up to nine Alaska villages to determine the possible impact of environmental contamination on local resources, and provide health-related technical assistance and health education to prevent contamination of local subsistence food supplies. Many Alaska villages rely on local natural resources for subsistence. In instances where environmental contamination and the potential for adverse health effects prohibit the use of a local resource, the environmental contamination would also result in an economic impact; villages would no longer be able to sell their resources and would have to purchase those resources from other sources. The purpose of the program is to: (1) Improve the local economic conditions by determining the possible impact of environmental contamination from Formerly Used Defense Sites (FUDS) on the local resources by assessing the pathways of exposure to contaminants from FUDS, with a special emphasis on the impact of these contaminants on subsistence-related food supplies; (2) create capacity within Alaska Native villages to assess public health issues related to pathways of exposure and provide health-related technical assistance and health education; and (3) develop the environmental health education and health promotion capacity within the villages to provide appropriate environmental health education and health promotion activities that are designed to address potential exposures and possible health effects. This program addresses the ''Healthy People 2010'' focus areas of educational and community-based programs, environmental health, and maternal, infant, and child health.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goals for the ATSDR: Prevent ongoing and future exposures and resultant health effects from hazardous waste sites and releases. Build and enhance effective partnerships.

Activities

Awardee activities for this program are as follows:

a. Attend the Health Assessment training course provided by ATSDR.

b. Prepare culturally relevant and sensitive environmental health education materials, promotion materials, and activities that are designed to address community concerns related to environmental contamination from FUDS sites. This may include information regarding potential health effects (both cancer and non-cancer), site-specific chemicals, the possible impact on local food sources, and information regarding exposures that are unique to each village.

c. Provide local knowledge of hazardous waste site conditions, site history, and natural resource use, assist with data gathering, assist with obtaining community concerns, etc.

d. With ATSDR, jointly develop public health assessments, recommendations to reduce exposure, and identify areas for the needed health education related to environmental contamination. Information on ATSDR public health assessments can be found at the ATSDR Web page *http://www.atsdr.cdc.gov/HAC/PHA/.*

e. Work in collaboration with federal, state, and local agency staff, community and village members, and local health care providers to develop and implement culturally relevant and sensitive environmental health education and promotion activities and to enhance outreach, communication and information exchange related to contamination from FUDS sites. The materials are to be designed to address community concerns related to environmental contamination, including results of health assessments, cancer, chemicals, and exposures unique to each village.

f. Distribute educational materials and develop and participate in other relevant health education activities such as working with health care providers, development of curriculum and working with students, demonstration of food preparation methods to reduce exposures, etc.

g. Meet monthly, either telephonically or in person, with ATSDR and other program participants to coordinate planned efforts and review progress.

In a cooperative agreement, ATSDR staff is substantially involved with the program activities, above and beyond routine grant monitoring.

ATSDR activities for this program are as follows:

a. ATSDR will provide a culturally appropriate Public Health Assessment Training Course for staff from selected villages and other interested Alaska Natives who work in environmental health. The course will explain the process that ATSDR uses to assess environmental health impacts from hazardous substances. Participants will also learn the fundamentals to evaluate pathways of exposure and associated health impacts of these exposures. This includes how to evaluate environmental sampling data, steps for involving the community in the assessment process, identifying potential and completed exposure pathways, evaluating health implications and determining appropriate public health actions. Participants will also learn methods to apply health education, health promotion, and risk communication principles at sites.

b. ATSDR and the funded villages will jointly develop public health assessments and health consultations which identify pathways of exposure, make recommendations to reduce exposures to environmental contaminants, and identify areas needed for health education and health promotion.

c. ATSDR will work in collaboration with other federal, state, and local agency staff, community and village members, and local health care providers to develop and implement environmental health education and promotion activities and to enhance outreach, communication and information exchange related to FUDS.

II. Award Information

Type of Award: Cooperative Agreement.

ATSDR involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: FY 2004.

Approximate Total Funding: $600,000.

Approximate Number of Awards: Six to Nine.

Approximate Average Award: $67,000 (This amount is for the whole budget period, and includes both direct and indirect costs).

Floor of Award Range: $50,000.

Ceiling of Award Range: $100,000.

Anticipated Award Date: July 15, 2004.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, ATSDR's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by:

- Federally recognized Alaska native tribal governments
- Alaska native tribal organizations

This program is directed only to federally recognized Alaska Native Villages.

This announcement is limited to only those tribes with proximity to FUDS in Alaska and with suspected impacts on economies and traditional foods.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other Eligibility Requirements

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

A pre-application conference call will be held [INSERT DATE] at [INSERT TIME]. Attendance at the conference call is not required, however, during the call information about this program, guidance for completing your application, will be discussed. To participate in the conference call, dial [INSERT info about phone number, any access codes or passwords]. If you experience technical difficulties accessing the conference call, please call [INSERT number] and someone will be available to assist you. If you are unable to participate in the conference call, the information discussed will be available by [INSERT DATE] on the ATSDR web page at the following Internet address: [INSERT address].

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

You must submit a signed original and two copies of your application forms.

You must include a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: 20. If your narrative exceeds the page limit, only the first pages that are within the page limit will be reviewed
- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Single spaced
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

a. Background information on the FUDS in your village: history, known contamination, how the land was used before the FUDS existed.

b. Potential for exposure to hazardous substances originating from a FUDS.

c. Potential impact of FUDS contamination from the FUDS on natural resources that the village depends on both for subsistence and as an economic resource, with a special emphasis on subsistence food sources.

d. Ability to provide staff that will complete the activities required for this program.

e. Ability to develop health educational materials to address the FUDS. Include a plan and timeline for developing health educational materials.

f. Knowledge about how environmental contamination has impacted health of your village members and how the contamination has impacted the economic condition of the village. Include a plan and timeline for data gathering, obtaining community concerns, developing health assessments, identifying areas with the greatest need for health education, and providing recommendations to reduce exposure.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes, Resumes, Organizational Charts, Letters of Support, etc.

IV.3. Submission Dates and Times

Application Deadline Date: April 2, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the

application as having been received by the deadline.

This program announcement is the definitive guide on submission address and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Funding restrictions which must be taken into account while writing your budget are as follows: None

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

Application Submission Address: Submit the signed hard copy original and two copies of your application by mail or express delivery service to: Technical Information Management-PA#04081, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Ability to provide staff who will complete the activities required for this program including: (50 percent total)

- Attend the Health Assessment training course provided by ATSDR in Alaska. (10 percent)
- Prepare culturally relevant and sensitive environmental health education and health promotion materials that are designed to address community concerns such as health effects (both cancer and non-cancer), exposure to environmental contaminants, and exposures that are unique to each village. (10 percent)
- Provide local knowledge of hazardous waste site conditions, assist in data gathering, obtain community concerns, etc. (10 percent)
- Develop health assessments, recommendations to reduce exposure, and identify areas with the greatest need for health education. (10 percent)
- Demonstrated ability to work collaboratively with tribal members, federal, state, and local agencies and health care providers to address health concerns and identify areas with greatest need for health education. (10 percent)

2. Potential impact of contamination from FUDS on natural resources that the village uses and size range of potentially impacted population. Does the village have a current substantial subsistence-based activity where FUDS may impact the long-term economic viability of the community; where subsistence activities impact the local community; or where development of business activities go beyond the local village community to markets outside the region. (30 percent)

3. Potential for exposure to hazardous substances originating from a FUDS. Identify the FUDS, known hazardous substances present, known contamination in the environment (*e.g.,* soil, water, food, animals), and use of land and/or resources affected by the FUDS. (20 percent)

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by ATSDR. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate your application according to the criteria listed in the Criteria section above.

V.3. Anticipated Announcement and Award Dates

Award Date: July 15, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*

The following additional requirements apply to this project:

- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–18 Cost Recovery—ATSDR
- AR–19 Third Party Agreements—ATSDR
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with a hard copy original, plus two copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

f. Measures of Effectiveness.

2. Financial status report and annual progress report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be sent to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Dean S. Seneca, MPH, MCURP (E–32), Assistant Director, Office of Tribal Affairs, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Atlanta, GA 30333, Telephone: 404–498–0457, e-mail: *DSeneca@cdc.gov.*

For budget assistance, contact: Edna Green, Grants Management Specialist (K–75), CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2743, e-mail: *EGreen@cdc.gov.*

Dated: January 27, 2004.

Sandra R. Manning,

CGFM,Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–2047 Filed 1–30–04; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HOMELAND SECURITY

Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection (''COAC'')

AGENCY: Department of Homeland Security.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the first meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection (COAC), and the expected agenda for its consideration.

DATES: The next meeting of the COAC will be held on Friday, February 6, 2004 at 9:30 a.m. to 1 p.m. in the Polaris Room of the Ronald Reagan Building, located at 1300 Pennsylvania, NW., Washington, DC 20229. The duration of the meeting will be approximately four hours.

FOR FURTHER INFORMATION CONTACT: Vetta Jeffries, Department of Homeland Security, 202–282–8468.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. However, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. All persons entering the building must be cleared by building security at least 72 hours in advance of the meeting. Personal data to obtain this clearance must be submitted to Vetta Jeffries, 202–282–8468, no later than 2 p.m. EST on February 5, 2004.

Agenda

The COAC is expected to pursue the following agenda, which may be modified prior to the meeting:

(1) Department of Homeland Security Reorganization.

(2) Customs and Border Patrol Officer.

(3) Food and Drug Administration Bio Terrorism Act.

(4) Advance Cargo Manifest Information.

(5) Free and Secure Trade (FAST).

(6) Customs-Trade Partnership Against Terrorism (C–TPAT) and Container Security Initiative (CSI) Human Capital Plan.

(7) Focused Assessment/Importer Self-Assessment Program.

(8) World Customs Organization Task Force on Global Security Standards.

(9) Customs Brokers Examination.

(10) Automated Commercial System Maintenance.

Dated: January 28, 2004.

C. Stewart Verdery,

Assistant Secretary for Border and Transportation Security Policy and Planning.

[FR Doc. 04–2120 Filed 1–29–04; 1:41 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–1220–MA]

Notice of Seasonal Closure of Public Lands to Motorized Vehicle Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of seasonal closure of certain public lands located in Lincoln County, Wyoming, to all types of motor vehicle use.

SUMMARY: Pursuant to 43 Code of Federal Regulations subpart 8364, the Bureau of Land Management (BLM) may issue an order to close the use of BLM administered lands to the public to protect those lands and resources. The Kemmerer Resource Management Plan (RMP) Record of Decision (ROD), April 29, 1986, states that big game winter ranges may be closed to minimize stress to wintering animals.

After consulting with the Wyoming Game and Fish Department the BLM Kemmerer Field Manager has decided to close certain BLM-administered lands and travel ways including existing roads and two-track trails, to all types of motorized vehicle travel (*i.e.*, snowmobiles, all-terrain vehicles, any vehicle including trucks, sport utility vehicles and cars, motorcycles *etc.*). Winter range as identified in the Kemmerer RMP and as described below in the **SUPPLEMENTARY INFORMATION** section will be closed from January 1, 2004, through April 30, 2004.

This seasonal closure affects public lands located within the Raymond Mountain Wilderness Study Area (WSA), Slate Creek, Rock Creek, and Bridger Creek winter ranges. This action is necessary for the protection of crucial winter range habitat for elk, moose, antelope, and mule deer. Except for travel on highways or county roads, motorized vehicle travel within these areas will be allowed only by written authorization from the Kemmerer Field Manager. When performing official duties personnel of the BLM, Wyoming Game and Fish Department, U.S. Department of Agriculture-APHIS & Forest Service, U.S. Fish & Wildlife Service, and Lincoln and Uinta County Sheriff Offices are exempt from this closure.

SUPPLEMENTARY INFORMATION: The BLM Kemmerer Field Office is responsible for management of crucial winter range habitat located on public lands within Lincoln County. The Kemmerer RMP identifies areas of crucial winter range and the ROD states that seasonal closures for motorized vehicles may be used to protect big game winter range. Closures will vary depending on conditions and are to be implemented in coordination with the Wyoming Game and Fish Department (Kemmerer RMP, pages 25 and 27). The Raymond Mountain WSA, Slate Creek, Rock Creek, and Bridger Creek areas are crucial wintering ranges for elk, moose, antelope, and mule deer. Because of the effects of 4 years of exceptional drought and the health of wintering deer, moose and elk, the BLM has decided to implement a seasonal closure to protect the winter range from further degradation. Low forage production associated with the drought has caused animals to go into winter in very poor

condition. Additionally, forage production on winter ranges has also been reduced. These impacts to wintering wildlife are currently compounded by significant human activity, such as day and night wildlife observation, still and video photography, snowmobiling, and antler gathering. Because of the increased stress that the presence of motorized vehicles inflict on wintering big game during difficult winter periods, the number of animals that will die on the winter range can increase. This would also decrease production of young during the following summer. Therefore, by closing crucial winter range to motorized vehicles impacts to wintering big game would be reduced.

By this order the following BLM-administered lands are included in this closure:

- The Raymond Mountain WSA is located approximately 15 miles north of Cokeville and contains 32,956 acres.
- The Slate Creek area includes all BLM-administered lands south of Fontenelle Creek, west and north of Route 189, and east of the crest of Slate Creek Ridge, and contains 111,100 acres.
- The Rock Creek area includes all BLM-administered lands south of County Road 204 (Pine Creek Road), west of the crest of Dempsey Ridge, west of Fossil Butte National Monument, north and east of Highway 30, and contains 105,750 acres.
- The Bridger Creek area includes all BLM-administered lands south of Highway 30, west of Fossil Ridge, west of Bear River Divide, north of the Uinta-Lincoln County line, east of the Utah-Wyoming border, and southeast of Highway 89, and contains 98,400 acres.

Maps of these seasonal closure areas will be posted with this notice at key locations that provide access into the closure areas, as well as at the Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming 83101–9710.

In addition to the exemption of authorized personnel performing official duty, under this closure the following may continue:

- Maintenance and pumping of existing oil and gas facilities by oil and gas leaseholders and their associated authorized operators as approved,
- Conduct of livestock operations by holders of grazing permits as approved, and
- Use of these areas by non-motorized means such as by foot or horseback.

After April 30, 2004, motorized vehicle use will be limited to existing roads and two-track trails.

Authority for closure orders is provided in regulation 43 CFR, subparts 8341.2 and 8364.1. Violations of this closure are punishable by a fine not to exceed $1000, and/or imprisonment not to exceed 12 months.

DATES: This seasonal closure will be effective from January 1, 2004, through April 30, 2004.

FOR FURTHER INFORMATION CONTACT: Wally Mierzejewski, Outdoor Recreation Planner or Jim Wright, Wildlife Biologist, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming 83101, or contact by telephone at 307–828–4500.

Dated: December 4, 2003.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 04–2055 Filed 1–30–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–930–04–1310–DB]

Notice of Availability and Announcement of Public Subsistence-Related Hearings; Alpine Satellite Development Plan, Draft Environmental Impact Statement; National Petroleum Reserve-Alaska, and Colville River Delta

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and announcement of public subsistence-related hearings: Alpine Satellite Development Plan, Draft Environmental Impact Statement; National Petroleum Reserve-Alaska, and Colville River Delta.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Alpine Satellite Development Plan Draft Environmental Impact Statement (DEIS). The DEIS provides National Environmental Policy Act (NEPA) analysis and examines potential impacts of ConocoPhillips Alaska, Inc.'s (CPAI) proposed action to develop five satellite oil accumulations in the Northeast National Petroleum Reserve-Alaska (NPR–A) and the adjacent Colville River Delta. CPAI proposes to develop five drilling pads and associated access roads, bridges, airstrips, pipelines and power lines. The pads are termed CD–3, CD–4, CD–5, CD–6, and CD–7. In the Colville River Delta, CD–3 is on State of Alaska land and CD–4 is on land owned by Kuukpik Corporation, a Native-owned corporation created under the authority of the Alaska Native Claims Settlement Act for the village of Nuiqsut. CD–5 is on land conveyed to Kuukpik within the NPR–A; CD–6 and CD–7 are on lands administered by the BLM in the NPR–A. The company proposes to place 20 to 30 wells on each pad and to transport the unprocessed, three-phase (oil, gas, and water) drilling product to the Alpine Central Processing Facility for processing. Processed oil would be placed in the existing pipeline system for transport to the Trans-Alaska Pipeline System.

The DEIS evaluates a range of alternatives, consistent with applicable law, by which to accomplish the proposed action while mitigating adverse impacts. Four action alternatives that fulfill the purpose and need of the proposed action are presented and analyzed. The No Action Alternative is presented as a benchmark, enabling the public and decision makers to compare the magnitude of environmental effects of the action alternatives. The alternatives cover the full range of reasonable development scenarios. The Agency's preferred alternative has not been identified in the DEIS, but will be identified in the final EIS.

Also included in the DEIS is an analysis of full-field development (FFD) for an 890,000-acre area that includes the Colville River Delta west of its eastern-most channel and extends west to the vicinity of the mouth of the Kogru River on the west side of Harrison Bay and south from the Kogru River mouth for approximately 45 miles. Though FFD is not proposed at this time, the BLM considers it likely that development besides that currently proposed by CPAI will occur in this area over the next 20 years. As a result, the DEIS evaluates and analyzes alternative development options for potential future development. This approach gives the public and decision makers a comprehensive overview of proposed and potential future development in the area. An agency-preferred alternative or Record of Decision will not be developed for FFD. Decisions on future proposals for developments in the area would be addressed through additional NEPA analysis tiered or incorporated by reference to the final EIS.

Section 810 of the Alaska National Lands Conservation Act requires the BLM to evaluate the effects of plans presented in this DEIS on subsistence activities in the area of the proposed action and alternatives, and to hold public hearings if it finds that any alternative may significantly restrict subsistence activities. The analysis of environmental consequences indicates

the proposed action and two alternatives may significantly restrict subsistence activities. In addition, all alternatives may significantly restrict subsistence in the cumulative case. Therefore, the BLM is holding public hearings on subsistence in conjunction with the public meetings discussed below.

DATES: Written comments on the DEIS will be accepted until March 1. Public meetings or hearings are scheduled for 7 to 9 p.m. at the following locations and dates:

Barrow, Alaska, February 9, 2004, North Slope Borough Assembly Chambers
Nuiqsut, Alaska, February 10, 2004, Kisik Community Center
Atqasuk, Alaska, February 12, 2004, Village Community Center
Anaktuvuk Pass, Alaska, February 17, 2004, Village Community Center
Fairbanks, Alaska, February 18, 2004, Noel Wein Public Library
Anchorage, Alaska, February 23, 2004, Wilda Marston Theater, Z.J. Loussac Library

An open house will precede each meeting at 5:30. The above meetings, any changes or rescheduling of the above meetings, and any additional public meetings will be announced through public notices, media news releases, and/or other mailings.

ADDRESSES: Written comments should be sent to: Alpine Satellite Development Plan EIS, Entrix Project Office, 3701 E. Tudor Road, Suite 208, Anchorage, Alaska, 99507; faxed to 907–563–0439; hand delivered to Entrix, Inc., 3701 E. Tudor Road, Suite 208, Anchorage, Alaska, or to the BLM Public Information Center in the Federal Building, 222 W. 7th Avenue, Anchorage, Alaska; or forwarded electronically to the project Web site at *http://www.alpine-satellites-eis.com.* Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirety. The DEIS will be available in either hard copy or on compact disk at Entrix, Inc., 3701 E. Tudor Road, Suite 208, Anchorage, Alaska, 99507; and the Alaska State Office, Public Information Center at 222 West 7th Avenue, Anchorage, Alaska, 99513–7599. Copies of the DEIS will also be available for public review at the following locations: City of Anaktuvuk Pass, Anaktuvuk Pass, Alaska; Loussac Library and Alaska Resources Library and Information Service, Anchorage, Alaska; City of Atqasuk, Atqasuk, Alaska; Tuzzy Public Library, Barrow, Alaska; City of Nuiqsut, Nuiqsut, Alaska; and Noel Wein Library, Fairbanks, Alaska. The entire document can be reviewed at the project Web site at *http://www.alpine-satellites-eis.com.*

FOR FURTHER INFORMATION CONTACT: Jim Ducker, BLM Alaska State Office, 907–271–3130; e-mail *Jim_Ducker@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: Public participation has occurred throughout the period since the BLM published a Notice of Intent (NOI) in the **Federal Register** on February 18, 2003, announcing the intent to begin preparation of the Alpine Satellite Development Plan EIS. Public meetings were held in Anchorage, Barrow, Nuiqsut, and Fairbanks between March 6 and March 20, 2003. The BLM and four cooperating agencies—U.S. Army Corps of Engineers (USACE), U.S. Environmental Protection Agency (USEPA), U.S. Coast Guard (USCG), and the State of Alaska have also conducted government-to-government consultation with three Native governments: the Native Village of Barrow, the Inupiaq Community of the Arctic Slope, and the Native Village of Nuiqsut, and have worked closely with the North Slope Borough, the local government of Nuiqsut, and other Federal agencies on the DEIS.

The development on Federal lands within NPR–A is subject to the management direction provided by the BLM's Record of Decision for the Northeast National Petroleum Reserve-Alaska Integrated Activity Plan/Environmental Impact Statement (Northeast NPR–A IAP/EIS). The Record of Decision for this development EIS may amend the Northeast NPR–A IAP/EIS. Any amendment, including exceptions to requirements to the Northeast NPR–A IAP/EIS, would be limited to those changes necessary for the development authorized by BLM following completion of the final EIS and will not constitute a general amendment of the Northeast NPR–A IAP/EIS.

EPA is a cooperating agency because it potentially has a permitting decision to make on the disposal of wastewater from camps under an NPDES permit. The alternatives presented in the DEIS discuss the use of a general permit or an individual permit. The USACE as a cooperating agency will review the proposed project pursuant to relevant Federal jurisdiction.

Dated: December 8, 2003.

Henri R. Bisson,

State Director.

[FR Doc. 04–2059 Filed 1–30–04; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1150–PG]

Notice of Public Meeting, Upper Snake River Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Snake River Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held February 25 and 26, 2003, at the BLM Fire Warehouse, 3630 Overland Road in Burley, Idaho. The meeting will start February 25 at 9 a.m., with the public comment period beginning at approximately 1 p.m. The meeting will adjourn on February 26 at or before 5 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Upper Snake River District (USRD), which covers south-central and southeast Idaho. At this meeting, topics we plan to discuss include:

Range Ecology training for new members.

Updates on major planning projects in the USRD, including coordination of subgroups.

BLM's Draft Environmental Impact Statement on proposed changes to Grazing Regulations.

An update on the Idaho BLM's proposed organizational refinements, and the potential changes to the RAC.

Brief overview on the Abandoned Mine Lands program, for the education of the RAC.

Other items of interest raised by the Council.

All meetings are open to the public. The public may present written

comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

Other meetings in 2004 will be held in Jerome, Idaho on May 19–20; in Idaho Falls, Idaho on September 8–9; and in Pocatello, Idaho on November 17–18. The exact location of these meetings will be announced through press releases to local media.

FOR FURTHER INFORMATION CONTACT: David Howell, RAC Coordinator, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524–7559.

Dated: January 27, 2004.

David O. Howell,

Public Affairs Specialist.

[FR Doc. 04–2045 Filed 1–30–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–03–1232–EB–AZ11; 8371]

Notice of Final Supplementary Rules on Public Lands Within All Arizona and California Long-Term Visitor Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules for Long-Term Visitor Areas managed by the California Desert District Office, California and Yuma Field Office, Arizona.

SUMMARY: The Bureau of Land Management (BLM) Yuma Field Office, Palm Springs Field Office, and El Centro Field Office are publishing revised supplementary rules applying to the Long-Term Visitor Area (LTVA) Program. The program, which was instituted in 1983, established designated LTVAs and identified an annual long-term use season from September 15 to April 15. During the long-term season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated LTVAs and purchase an LTVA permit. The revised supplementary rules are necessary to allow safe accommodation by BLM of increasing demand for long-term winter visitation and provide for protection of natural resources through improved management.

EFFECTIVE DATE: March 3, 2004.

ADDRESSES: You may direct inquiries or suggestions to the following: Internet e-mail: *Mark_Lowans@blm.gov.* Mail, personal, or messenger delivery: Yuma Field Office, 2555 Gila Ridge Road, Yuma, AZ 85365 (Attention: Mark Lowans); Palm Springs Field Office, P.O. Box 581260 (690 West Garnet Ave.), North Palm Springs, CA 92258 (Attention: Mona Daniels); or El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243 (Attention: Dallas Meeks).

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Outdoor Recreation Planner, telephone (928) 317–3210; Mona Daniels, Outdoor Recreation Planner, telephone (760) 251–4800; or Dallas Meeks, Outdoor Recreation Planner, telephone (760) 337–4400; or by e-mail: *Mark_Lowans@blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The proposed supplementary rules were published in the **Federal Register** on December 12, 2002 (67 FR 76414), allowing 30 days for public comment. BLM received no public comments on the proposed supplementary rules. Therefore, we are publishing these supplementary rules in final form unchanged from the proposal.

II. Discussion of the Supplementary Rules

These supplementary rules apply to all lands within designated Long-Term Visitor Areas in Arizona and California. The BLM has determined these supplementary rules are necessary to protect the natural resources and to provide for safe public recreation and public health, to reduce the potential for damage to the environment, and to enhance the safety of visitors. The purpose of the LTVA program is to provide areas for long-term winter camping use. The sites designated as LTVAs are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and BLM wrote environmental assessments for each site location.

The program was established for safe and proper accommodation of the increasing demand for long-term winter visitation and for natural resource protection through improved management of this use. The designation of LTVAs ensures that specific locations are available for long-term use year after year, and that inappropriate areas are not used for extended periods.

Visitors may camp without an LTVA permit outside LTVAs for up to 14 days in any 28-day period, on public lands not otherwise posted or closed to camping.

The authority for the designation of LTVAs is contained in 43 CFR 8372.0–3 and 8372.0–5(g). The authority for the establishment of an LTVA program is contained in 43 CFR 8372.1. The authority for the payment of fees is contained in 36 CFR 71. The authority for establishing supplementary rules is contained in 43 CFR 8365.1–6.

The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules are available in each local office having jurisdiction over the lands, sites, or facilities affected, and are posted near and/or within the lands, sites, or facilities affected.

Violations of supplementary rules are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months, as provided in Section 303 of the Federal Land Policy and Management Act (43 U.S.C. 1733), and the Sentencing Reform Act (18 U.S.C. 3571).

Upon internal review of the proposed supplementary rules, we have made a few changes in the supplementary rules.

We have amended Section 1 to adjust the fees you must pay for LTVA permits. As a result of the increasing program costs each year for the LTVAs, we have raised the fees from $125.00 to $140.00 for the long-term permit and from $25.00 to $30.00 for the short-term permit and each 14-day renewal of a short-term permit.

We have amended Section 4, Permit Revocation, to include misconduct of your pets as grounds for revocation of your permit, in order to protect the health, safety, and welfare of other visitors.

We have revised Section 12, Livestock, to read ''No boarding or keeping livestock (horses, cattle, sheep, goats, etc.) within LTVA boundaries is permitted.'' This change is intended to remove the health concerns that have arisen when livestock have been boarded in close proximity with campers for extended periods of time.

Section 25, Aircraft Use, has been modified to read ''Do not land or take off an aircraft, including ultralights and hot air balloons, in LTVAs, unless an authorized BLM officer approves in advance.'' This rule was originally too restrictive and ambiguous in its structure. Adding the last phrase provides the BLM with the latitude of

authorizing access for emergency aircraft if ever needed.

Section 26, Perimeter Camping, has been modified to reduce the 2-mile restriction on camping outside Midland LTVA to 1 mile. We have determined that the broader buffer zone is unnecessary.

In addition, we have corrected editorial and typographical errors that appeared in the proposed supplementary rules.

III. Procedural Information

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are directed at the effective management of developed Long-Term Visitor Areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These supplementary rules do not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues.

National Environmental Policy Act

BLM has prepared environmental assessment documents including the Yuma District Resource Management Plan and Environmental Impact Statement dated 1988; La Posa Interdisciplinary Management Plan and Environmental Assessment dated July 1997; California Desert Conservation Area Plan as amended and final Environmental Impact Statement and Proposed Plan dated 1980, and has found that the supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules enable effective BLM management of its Long-Term Visitor Areas for the public. BLM has placed the Environmental Assessment (EA) and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the first address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, (RFA) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact either detrimental or beneficial, on a substantial number of small entities.

The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to protect the health and safety of individuals, property, and resources on the public lands. Therefore, BLM has determined under the RFA that these supplementary rules do not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a major rule as defined in SBREFA at 5 U.S.C. 804(2). Again, the supplementary rules pertain only to individuals who wish to camp on public lands. In this respect, the regulation of such use is necessary to protect the public lands, facilities, and those, including small business concessionaires, who use them. The supplementary rules have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these supplementary rules have a significant or unique effect on state, local, or tribal government or the private sector. The supplementary rules do not require anything of state, local, or tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that the supplementary rules do not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have a 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. The supplementary rules apply in Arizona and California, but do not address jurisdictional issues involving those State governments. Therefore, in accordance with Executive Order 13132, BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with E.O. 13175, we have found that these final supplementary rules do not include policies that have tribal implications. Since the rules do not change BLM policy and do not involve Indian trust lands or resources, we have determined that the government-to-government relationships should remain unaffected.

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

These final supplementary rules do not comprise a significant energy action. The rules will not have an adverse effect on energy supplies, production, or consumption. They merely establish rules of conduct for certain visitor areas.

Paperwork Reduction Act

The supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Mervin G. Boyd of the Yuma, Arizona, Field Office assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

For the reasons stated in the Preamble, and under the authority of 43 CFR 8365.1–6, the Bureau of Land Management promulgates supplementary rules for public lands in

Arizona and California, to read as follows:

Dated: December 12, 2003.

Elaine Y. Zielinski,

State Director, Arizona.

Mike Pool,

State Director, California.

Supplementary Rules on Use of Long-Term Visitor Areas in Arizona and California

The following are the supplementary rules for the designated Long-Term Visitor Areas (LTVAs) and are in addition to rules of conduct set forth in 43 CFR subpart 8365. The supplementary rules apply year-long to all public land users who enter the LTVAs.

Sec.1. The Permit Requirements and Fees

You must have a permit to camp in a designated LTVA between September 15 and April 15. The permit authorizes you to camp within any designated LTVA using those camping or dwelling unit(s) indicated on the permit between the period from September 15 to April 15. There are two types of permits: Long-term and Short-visit. The long-term permit fee is $140.00, U.S. funds only, for the entire season and any part of the season. The short-term permit is $30.00, U.S. funds only, for 14 consecutive days. The short-visit permit may be renewed an unlimited number of times for the cost of $30.00 for 14 consecutive days. BLM will not refund permit fees.

Sec. 2. Displaying the Permit

To make it valid, at the time of purchase, you must affix your short-visit permit decal or long-term permit decal, using the adhesive backing, to the bottom right-hand corner of the windshield of all transportation vehicles and in a clearly visible location on all camping units. You may use no more than 2 secondary vehicles within the LTVA.

Sec. 3. Permit Transfers

You may not reassign or transfer your permit.

Sec. 4. Permit Revocation

An authorized BLM officer may revoke, without reimbursement, your LTVA permit if you violate any BLM rule or regulation, or if your conduct or that of your family, guest, or pets is inconsistent with the goal of BLM's LTVA Program. Failure to return any LTVA permit to an authorized BLM officer upon demand is a violation of these supplementary rules. If BLM revokes your permit, you must remove all of your property and leave the LTVA system within 12 hours of notice, and you may not enter any other LTVA in Arizona or California for the remainder of the LTVA season.

Sec. 5. Unoccupied Camping Units

Do not leave your LTVA camping unit or campsite unoccupied for a period of more than 5 days unless an authorized BLM officer approves in advance.

Sec. 6. Parking

For your safety and privacy, you must maintain a minimum of 15 feet of space between dwelling units.

Sec. 7. Removal of Wheels and Campers

Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. You may set trailers and pickup campers on jacks manufactured for that purpose.

Sec. 8. Quiet Hours

Quiet hours are from 10 p.m. to 6 a.m. under applicable state time zone standards, or as otherwise posted.

Sec. 9. Noise

Do not operate audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise as determined by the authorized BLM officer. Outdoor amplified music is allowed only within La Posa and Imperial Dam LTVAs and only in locations designated by BLM and when approved in advance by an authorized BLM officer.

Sec. 10. Access

Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

Sec. 11. Structures and Landscaping

a. Fixed fences, dog runs, storage units, windbreaks, and other such structures are prohibited. Temporary structures of these types must conform to posted policies.

b. Do not alter the natural landscape by painting rocks or defacing or damaging any natural or archaeological feature.

Sec. 12. Livestock

Do not board or keep livestock (horses, cattle, sheep, goats, etc.) within LTVA boundaries.

Sec. 13. Pets

Pets must be kept on a leash at all times. Keep an eye on your pets. Unattended and unwatched pets may fall prey to coyotes or other desert predators. You are responsible for clean-up and sanitary disposal of your pet's waste.

Sec. 14. Cultural Resources

Do not disturb any archaeological or historical values including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

Sec. 15. Trash

You must place all trash in designated receptacles. Public trash facilities are shown in the LTVA brochure. Do not deposit trash or holding-tank sewage in vault toilets. An LTVA permit is required for trash disposal within all LTVA campgrounds. You may not change motor oil, vehicular fluids, or dispose of or possess these used substances within an LTVA.

Sec. 16. Dumping

Do not dump sewage, gray water, or garbage on the ground. This includes motor oil and any other waste products: Federal, state, and county sanitation laws and county ordinances specifically prohibit these practices. Sanitary dump station locations are shown in the LTVA brochure. You must have an LTVA permit for dumping within all LTVA campgrounds.

Sec. 17. Self-Contained Vehicles

a. In Pilot Knob, Midland, Tamarisk, and Hot Springs LTVAs, you may camp only in self-contained camping units. The La Posa, Imperial Dam, and Mule Mountain LTVAs are restricted to self-contained camping units, except within 500 feet of a vault toilet or rest room.

b. Self-contained camping units must have a permanent affixed waste water holding tank of 10-gallon minimum capacity. BLM does not consider port-a-potty systems, or systems that utilize portable holding tanks, or permanent holding tanks of less than 10-gallon capacity, to be self-contained.

Sec. 18. Campfires

You may have campfires in LTVAs subject to all local, state, and Federal regulations. You must comply with posted rules.

Sec. 19. Wood Collection

Do not collect wood within LTVAs. You may not possess native firewood (*i.e.*, mesquite, ironwood, palo verde) within LTVAs. Please contact the nearest BLM office for current regulations concerning wood collection.

Sec. 20. Speed Limit

The speed limit in LTVAs is 15 miles per hour or as otherwise posted.

Sec. 21. Off-Highway Vehicle Use

Motorized vehicles must remain on existing roads, trails, and washes.

Sec. 22. Vehicle Use

Do not operate any vehicle in violation of state or local laws and regulations relating to use, standards, registration, operation, and inspection.

Sec. 23. Firearms

Do not discharge or otherwise use firearms or weapons inside or within 1/2 mile of LTVAs.

Sec. 24. Vending Permits

You must have a vending permit to carry on any commercial activity. Please contact the nearest BLM office for information on vending or concession permits.

Sec. 25. Aircraft Use

Do not land or take off an aircraft, including ultralights and hot air balloons, in LTVAs, unless an authorized BLM officer approves in advance.

Sec. 26. Perimeter Camping

Do not camp within 1 mile outside the boundaries of Hot Spring, Tamarisk, Pilot Knob, and Midland LTVAs.

Sec. 27. Hot Spring Spa and Day Use Area

Do not consume, possess, or use food, beverages, glass containers, soap, pets, or motorized vehicles within the fenced-in area at the Hot Springs Spa. Day use hours are 5 a.m. to midnight.

Sec. 28. Mule Mountain LTVA

You may camp only at designated sites within Wiley's Well and Coon Hollow campgrounds. You may have only one (1) camping or dwelling unit per site.

Sec. 29. Imperial Dam and La Posa LTVAs

Do not camp overnight in desert washes in Imperial Dam and La Posa LTVAs.

Sec. 30. La Posa LTVA

You may enter La Posa LTVA only at legal access roads along U.S. Highway 95. Do not create or use any other access points. Do not remove or modify barricades, such as fences, ditches, and berms.

Sec. 31. Posted Rules

You must observe and obey all posted rules. Individual LTVAs may have additional specific rules in addition to these supplementary rules. If posted rules differ from these supplementary rules, the posted rules take precedence.

Sec. 32. Other Laws

If you hold an LTVA permit, you must observe and obey all Federal, state, and local laws and regulations applicable to the LTVA.

Sec. 33. Campsite Maintenance

You must keep the LTVA and, specifically, your campsite, in a neat, orderly, and sanitary condition.

Sec. 34. Length of Stay

Between April 16 and September 14 you may stay in an LTVA only 14 days in any 28-day period. After your 14th day of occupation at an LTVA, you must move outside of a 25-mile radius of that LTVA.

Sec. 35. Penalties

Under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), if you knowingly and willfully violate or fail to comply with any of the supplementary rules provided in this notice, BLM may revoke your LTVA permit, and you may be subject to a fine under 18 U.S.C. 3571 or other penalties in accordance with 43 U.S.C. 1733.

[FR Doc. 04–2057 Filed 1–30–04; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–933–04, 5410–EU–A501; AZA–32433—AZA–32437]

Notice of Receipt of Conveyance of Mineral Interest Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of minerals segregation.

SUMMARY: The reserved federally-owned mineral interest, in the private lands described in this notice, aggregating approximately 160 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws. The segregation is in response to an application for mineral conveyance under section 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1719).

FOR FURTHER INFORMATION CONTACT: Vivian Titus, Land Law Examiner, Arizona State Office, 222 N. Central Ave., Phoenix, Arizona 85004, (602) 417–9598.

SUPPLEMENTARY INFORMATION:

Gila and Salt River Base and Meridian, Yavapai County, Arizona

T. 9 N., R. 2 E.,
Sec. 29, E½NE¼NE¼, W½NE¼NE¼, NW¼NE¼, NE¼NW¼, NW¼NW¼.

The reserved Federal mineral interests will be conveyed in whole or in part upon completion of a mineral examination. The purpose is to allow consolidation of surface and subsurface minerals ownership where there are no known mineral values or in those instances where the Federal mineral interest reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development. Upon publication of this notice of segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the lands covered by the mineral conveyance application are segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining and mineral leasing laws. The segregative effect shall terminate upon: Final rejection of the mineral conveyance application; or February 2, 2006, whichever occurs first. If the United States issues a patent or deed of such mineral interest, the mineral interest will no longer be subject to the public land laws, including the mining leasing laws.

Dated: December 16, 2003.

Elaine Y. Zielinski,

State Director.

[FR Doc. 04–2056 Filed 1–30–04; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–149 (Review)]

Barium Chloride From China

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on barium chloride from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is March 23, 2004. Comments on the adequacy of responses may be filed with the Commission by April 16, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 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 review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 17, 1984, the Department of Commerce issued an antidumping duty order on imports of barium chloride from China (49 FR 40635). Following five-year reviews by Commerce and the Commission, effective March 10, 1999, Commerce issued a continuation of the antidumping duty order on imports of barium chloride from China (64 FR 42654, August 5, 1999). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–080, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as crystalline and anhydrous barium chloride, excluding high purity barium chloride. In its expedited five-year review determination, the Commission found that the appropriate definition of the Domestic Like Product was the same as Commerce's scope: all barium chloride, whether crystalline or anhydrous. For purposes of this notice, you should consider the Domestic Like Product to be all barium chloride, whether crystalline or anhydrous.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of crystalline and anhydrous barium chloride, excluding producers of high purity barium chloride. In its expedited five-year review determination, the Commission defined the Domestic Industry as all domestic producers of barium chloride. For purposes of this notice, you should consider the Domestic Industry to be all domestic producers of barium chloride.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 2004. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 16, 2004. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name,

telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–2064 Filed 1–30–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–44 (Review)]

Sorbitol From France

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on sorbitol from France.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the

Commission;[1] to be assured of consideration, the deadline for responses is March 23, 2004. Comments on the adequacy of responses may be filed with the Commission by April 16, 2004. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 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 review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On April 9, 1982, the Department of Commerce issued an antidumping duty order on imports of sorbitol from France (47 FR 15391). Following five-year reviews by Commerce and the Commission, effective March 17, 1999, Commerce issued a continuation of the antidumping duty order on imports of sorbitol from France (64 FR 42920, August 6, 1999). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is France.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination and in response to the July 18, 1993, order of the United States Court of International Trade remanding the investigation, the Commission defined two Domestic Like Products, crystalline and liquid sorbitol. In its original determination, the Commission made affirmative findings for both Domestic Like Products; however, in the remand investigation, the Commission made an affirmative determination with respect to crystalline sorbitol only. Certain Commissioners defined the Domestic Like Product differently in the original and remand investigations. In its expedited five-year review determination, the Commission found that the appropriate definition of the Domestic Like Product is the same as Commerce's scope: crystalline sorbitol, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals. For the purposes of this notice, you should consider the Domestic Like Product to be crystalline sorbitol, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination and in response to the July 18, 1993, order of the United States Court of International Trade remanding the investigation, the Commission defined two Domestic Industries, one producing crystalline sorbitol and one producing liquid sorbitol. In its original determination, the Commission made affirmative findings for both Domestic Industries; however, in the remand investigation, the Commission made an affirmative determination with respect to only the U.S. producers of crystalline sorbitol. Certain Commissioners defined the Domestic Industry differently in the original and remand investigations. In its expedited five-year review determination, the Commission defined the Domestic Industry to encompass all U.S. producers of crystalline sorbitol. For the purposes of this notice, you should consider the Domestic Industry to be all U.S. producers of crystalline sorbitol.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 04–5–081, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 2004. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 16, 2004. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries after 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 2003

(report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country after 1997, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: January 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–2063 Filed 1–30–04; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 68 FR 64372 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding this information collection are best assured of having their full effect if received by OMB within thirty days.

ADDRESSES: Written comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Statistical Data Collection for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer, at (703) 292–7556, or e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Data Collection on Public Understanding of Science and Technology (OMB) Control No. 3145-new).

Use of the Information. For over twenty years, the National Science Foundation (NSF) has conducted a series of surveys to collect information about public attitudes toward and understanding of science and technology. NSF plans to collect data on a limited number of key questions to maintain the continuity of its time series data and alert policy officials to significant changes, if any, in historic levels of public understanding and/or support for science and technology.

The primary immediate use of the date will be in Science and Engineering Indicators-2006, a biannual statistical report from the National Science Board to the President and Congress on the state of science and engineering in the United States. The report includes a chapter on public understanding of and attitudes toward science and technology. Science and Engineering Indicators is used extensively by officials and researchers in government, education, industry, and professional and nonprofit associations both in the United States and abroad.

Expected Respondents. The survey will be conducted by telephone. Approximately 2000 adults will be contacted and asked a series of questions designed to measure their understanding of scientific concepts and their attitudes toward science and technology.

Burden on the Public. The estimated respondent burden is 500 hours. NSF will add questions averaging 15 minutes of survey time to 2000 interviews to be conducted as part of the University of Michigan Survey of Consumer Attitudes. This computes to 500 public burden hours in 2004.

Dated: January 27, 2004.

Teresa R. Pierce,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–2024 Filed 1–30–04; 8:45 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 2, 2004: An Open Meeting will be held on Wednesday, February 4, 2004 at 10 a.m. A Closed Meeting will be held on Thursday, February 5, 2004 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (3), (5), (7), (9B), and (10) and 17 CFR 200.402(a) (3), (5), (7), (9ii), and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Glassman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the Open Meeting scheduled for Wednesday, February 4, 2004 will be:

1. The Commission will hear oral argument on an appeal by Orlando Joseph Jett (''Jett'') and the Division of Enforcement (the ''Division'') from an initial decision of an administrative law judge. Jett formerly was a government bond trader with former registered broker-dealer Kidder Peabody (''Kidder''). The Division alleges that Jett committed fraud in connection with a trading scheme involving U.S. Treasury zero coupon bonds by which he booked hundreds of millions of dollars of illusory profits for Kidder and earned millions of dollars in bonuses.

The law judge dismissed the fraud charges because, although she found Jett's conduct fraudulent, she concluded that the fraud was not committed ''in connection with'' the purchase or sale of securities. The law judge also found that Jett aided and abetted Kidder's recordkeeping violations caused by the inclusion of the illusory profits in its financial statements. The law judge barred Jett from association with any broker or dealer and ordered him to pay a civil money penalty of $200,000, to disgorge $8.21 million, plus prejudgment interest, and to cease and desist from committing or causing any violations or future violations of the applicable securities laws.

Jett appeals the law judge's findings of recordkeeping violations and contests the judge's findings that he engaged in a scheme to defraud. The Division appeals the law judge's decision with respect to the failure to find violations of the antifraud provisions.

Among the issues likely to be considered are:

1. Whether respondent committed the alleged violations; and

2. If so, whether sanctions should be imposed in the public interest.

For further information, please contact the Office of the Secretary at (202) 942–7070.

The subject matters of the Closed Meeting scheduled for Thursday, February 5, 2004 will be:

Formal orders of investigation;

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Litigation matter; and

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 28, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–2139 Filed 1–29–04; 12:34 pm]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice: 4599]

Office of Visa Services; 60-Day Notice of Proposed Information Collection: Form DS–117; Application To Determine Returning Resident Status; OMB Control #1405–0091

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Application to Determine Returning Resident Status.

Frequency: On occasion.

Form Number: DS–117.

Respondents: Aliens applying for special immigrant classification as a returning resident.

Estimated Number of Respondents: 875 per year.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 438 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., RM L–703, Washington, DC 20520, who may be reached at 202–663–1166.

Dated: January 13, 2004.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 04–2052 Filed 1–30–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4600]

30-Day Notice of Proposed Information Collection: DS–2028 Overseas Schools—Grant Status Report; OMB Control Number 1405–0033

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of

Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Request an extension of a currently approved collection.

Originating Office: A/OPR/OS.

Title of Information Collection: Overseas Schools—Grant Status Report.

Frequency: Annually.

Form Number: DS–2028.

Respondents: Overseas schools grantees.

Estimated Number of Respondents: 185.

Average Hours Per Response: .25.

Total Estimated Burden: 46.25.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Keith D. Miller, Department of State, Office of Overseas Schools, Room H328 SA–1, Washington, DC 20522–0132 who may be reached on (202) 261–8200. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

Dated: December 30, 2003.

Peggy M. Philbin,

Executive Director, Bureau of Administration, Department of State.

[FR Doc. 04–2053 Filed 1–30–04; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0335]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, Fax (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0335.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0335'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Dental Record Authorization and Invoice for Outpatient Services, VA Form 10–2570d.

OMB Control Number: 2900–0335.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–2570b, Examination Procedure Instructions for Participating Fee Dentist, and VA Form 10–2570c, Treatment Procedure Instructions for the Participating Fee Dentist, have been combined with VA Form 10–2570d, Dental Record Authorization and Invoice for Outpatient Services. VA Form 10–2570d is essential to the proper administration of VA outpatient fee dental program. The associated instructions make it possible to communicate with clarity the required procedures, peculiarities, and precautions associated with VA authorizations for contracting with private dentists for the provision of dental treatment for eligible veteran beneficiaries. Since most of the veterans who are authorized fee dental care are geographically inaccessible to VA dental clinics, it is necessary to request information as to the veteran's oral condition, treatment needs and the usual customary fees for these services from the private fee dentist whom the veteran has selected. The form lists the dental treatment needs of the veteran patient, the cost to VA to provide such services, and serves as an invoice for payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 14, 2003, at pages 59243–59244.

Affected Public: Business and other for profit.

Estimated Total Annual Burden: 4,153 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12,460.

Dated: January 15, 2004.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 04–2041 Filed 1–30–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0406]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0406.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0406'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Verification of VA Benefit-Related Indebtedness, VA Form 26–8937.

OMB Control Number: 2900–0406.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders authorized to make VA-guaranteed home or manufactured home loans on the automatic basis are required to determine through VA Finance Officers whether any benefits related debts exist in the veteran-borrower's name prior to the closing of any automatic loan. Lenders cannot close any proposed automatic loan until evidence is received from VA stating that there is no debt, or if a debt exists, the veteran has agreed on an acceptable repayment plan, or payments under a plan already in effect are current. VA Form 26–8937 is designed to assist lenders and VA in the completion of debt checks in a uniform manner. The form restricts information requested to only that needed for the debt check and also eliminates unlimited versions of lender-designed forms. It provides information advising the lender whether or not the veteran is exempt from paying the funding fee, which must be collected on all VA home loans unless the veteran is receiving service-connected disability compensation.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 5, 2003, at pages 62665–62666.

Affected Public: Individuals or households.

Estimated Annual Burden: 6,250 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Total Respondents: 75,000.

Dated: January 15, 2004.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 04–2042 Filed 1–30–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0567]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0567.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0567'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: President Memorial Certificate (PMC), VA Form 40–0247.

OMB Control Number: 2900–0567.

Type of Review: Extension of a currently approved collection.

Abstract: The PMC is a gold foiled-embossed certificate containing the Great Seal of the United States and bearing the President's signature. It is mailed to relatives and friends of deceased, honorably discharged veterans honoring their military service to our Nation. In most cases involving recent deaths, the PMC is automatically initiated for those eligible veterans buried in VA national cemeteries. The local VA Regional Office originates the application process without a request from the next of kin as part of processing death benefits claims.

The PMC insert is not self-initiated by the general public/eligible recipients. There is no form or application that is used to initiate an original request. Original requests are normally in the form of letters and/or telephone calls from eligible recipients. The purpose of the PMC Insert is to allow an eligible recipient, which includes the next of kin, other relatives or friends, *i.e.*, surviving spouses, sons, daughters, grandchildren, and others, to request additional certificates and/or replacements or corrected certificates upon receipt of the original PMC. Replacements are requested due to the PMCs being bent, water soaked, or otherwise damaged during mail handling; corrected PMCs are requested due to an incorrect name of the deceased veteran.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 5, 2003, at pages 62664–62665.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,479.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 44,363.

Dated: January 21, 2004.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 04–2043 Filed 1–30–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to authorize advance payment of educational assistance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 2, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail comments to: *nancy.kessinger@mail.va.gov.* Please refer to ''OMB Control No. 2900–0325'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Certificate of Delivery of Advance Payment and Enrollment, VA Form 22–1999V.

OMB Control Number: 2900–0325.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–1999V serves as the certificate of delivery of the advance payment and to report any changes in the student's training status. Schools are required to report the following to VA: (1) The failure of the student to enroll; (2) an interruption or termination of attendance; or, (3) a finding of unsatisfactory attendance, conduct or progress. VA uses this information from the current collection at the beginning of each school term to ensure that advance payments were delivered.

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 1,133 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,000.

Estimated Total Number of Respondents: 13,600.

Dated: January 20, 2004.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 04–2044 Filed 1–30–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
February 2, 2004

Part II

Department of Education

Magnet Schools Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004; Notice and Final Rule

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Magnet Schools Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.165A.

DATES:

Applications Available: February 2, 2004.

Deadline for Transmittal of Applications: March 15, 2004.

Deadline for Intergovernmental Review: May 14, 2004.

Eligible Applicants: Local educational agencies (LEAs) or consortia of LEAs.

Estimated Available Funds: Although the Congress has not enacted a final appropriation for FY 2004, the Department is inviting applications for this competition now so that it may be prepared to make awards following final action on the Department's appropriations bill. Based on the congressional action to date, we estimate that $103,750,000 will be available for new awards under this competition. The actual level of funding depends on final congressional action.

Estimated Range of Awards: $250,000–$3,500,000 per year.

Estimated Average Size of Awards: $2,075,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $4,000,000 for a single budget period of 12 months. The Deputy Under Secretary for Innovation and Improvement may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Magnet Schools Assistance Program (MSAP) provides grants to eligible LEAs and consortia of LEAs to support magnet schools that are part of an approved desegregation plan. Through the implementation of magnet schools, these program resources can be used in pursuit of the objectives of the ESEA, as reauthorized by the No Child Left Behind Act of 2001 (NCLB), which enables all elementary and secondary students to achieve to high standards and holds schools, LEAs, and States accountable for ensuring that they do so. In particular, the MSAP provides an opportunity for eligible entities to focus on expanding their capacity to provide public school choice to students who attend schools identified for improvement, corrective action, or restructuring under Title I, part A of the ESEA (Title I).

Priorities: This competition includes three competitive priorities taken from the regulations for this program, an additional competitive priority under the General Education Provisions Act, and an invitational priority. These priorities are as follows:

In accordance with 34 CFR 75.105(b)(2)(ii), the following three priorities are from the regulations for this program (34 CFR 280.32(b)–(d)).

Competitive Preference Priorities: For FY 2004 these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 30 points to an application, depending on how well the application meets these priorities.

These priorities are:

Need for assistance (up to 10 additional points). The Secretary evaluates the applicant's need for assistance under this part, by considering—

(a) The costs of fully implementing the magnet schools project as proposed;

(b) The resources available to the applicant to carry out the project if funds under the program were not provided;

(c) The extent to which the costs of the project exceed the applicant's resources; and

(d) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet schools project—*e.g.*, the type of program proposed, the location of the magnet school within the LEA—impacts on the applicant's ability to successfully carry out the approved plan.

New or revised magnet schools projects (up to 10 additional points). The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.

Selection of students (up to 10 additional points). The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather than through academic examination.

We are establishing the following priority for the FY 2004 grant competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA).

Competitive Preference Priority: For FY 2004 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

We establish this priority to provide eligible LEAs with an opportunity to use magnet schools to expand their capacity to provide public school choice to parents whose children attend schools that have not made adequate yearly progress (as that term is defined in ESEA, Title I, section 1111(b)(2)) for at least two consecutive years.

This priority is:

Expanding capacity to provide choice. The extent to which the applicant proposes to help parents whose children attend low-performing schools (that is, schools that have been identified for school improvement, corrective action, or restructuring under Title I) by—

(a) Selecting schools identified for school improvement, corrective action, or restructuring under Title I as magnet schools to be funded under this project and improving the quality of teaching and instruction in these schools;

(b) Maximizing the opportunity for students in low-performing schools to attend higher-performing magnet schools funded under the project and reducing minority group isolation in the low-performing sending schools; or

(c) Effectively informing parents whose children attend low-performing schools about choices that are available to them in the magnet schools to be funded under the project.

Under this competition we are also particularly interested in applications that address the following priority.

Invitational Priority: For FY 2004 this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Implementation of a rigorous evaluation to assess the effectiveness of particular interventions that are included in the project. The Secretary intends that this priority will allow program participants and the Department to determine whether the interventions identified for this rigorous evaluation produce meaningful effects on student achievement or teacher performance, as appropriate.

Evaluation methods using an experimental design are best for determining the effectiveness of the identified intervention(s). Thus, a project that addresses this invitational priority would use an experimental design under which participants—that

is, students, teachers, classrooms, or schools—are randomly assigned (a) to participate in the project activities being evaluated or (b) to a control group that does not participate in the project activities being evaluated.

If random assignment is not feasible, a project that addresses this invitational priority would use a quasi-experimental design with carefully matched comparison conditions. This alternative design attempts to approximate a randomly assigned control group by matching participants—that is, students, teachers, classrooms or schools—with non-participants having similar pre-program characteristics.

Proposed evaluation strategies that use neither experimental designs with random assignment nor quasi-experimental designs using a matched comparison group would not be responsive to this priority.

To be responsive to the invitational priority, the project evaluator would collect—before the project commences and after it ends—valid and reliable data that measure the impact of participation in the program or in the comparison group.

In determining the appropriateness of the proposed rigorous evaluation under the invitational priority, we will consider the extent to which the applicant presents a feasible, credible plan that includes the following:

(1) A clear description of the magnet school(s) and magnet school activities to be evaluated.

(2) The type of design to be used (that is, random assignment or matched comparison).

(3) The outcome(s) to be measured.

(4) A discussion of how the applicant plans to assign students, teachers, classrooms, or schools (as appropriate) to the project and control group or match them for comparison with other students, teachers, classrooms, or schools.

(5) A proposed evaluator, preferably independent, with the necessary background and technical expertise to carry out the proposed evaluation.

(6) Clearly identified costs that are directly allocable to the implementation of the rigorous evaluation proposed in response to this invitational priority.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. Ordinarily, this practice would have applied to the competitive preference priority for expanding capacity to provide choice. Section 437(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements rules governing the first grant competition under a new or substantially revised program authority. This is the first Magnet Schools Assistance program grant competition under the ESEA, as amended by the NCLB, and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the proposed competitive preference priority for expanding capacity to provide choice under section 437(d)(1). This competitive preference priority will apply to the FY 2004 grant competition only.

Program Authority: 20 U.S.C. 7231–7231j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 280.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: Although the Congress has not enacted a final appropriation for FY 2004, the Department is inviting applications for this competition now so that it may be prepared to make awards following final action on the Department's appropriations bill. Based on the congressional action to date, we estimate that $103,750,000 will be available for new awards under this competition. The actual level of funding depends on final congressional action.

Estimated Range of Awards: $250,000–$3,500,000 per year.

Estimated Average Size of Awards: $2,075,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $4,000,000 for a single budget period of 12 months. The Deputy Under Secretary for Innovation and Improvement may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs or consortia of LEAs.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:* Applicants must submit with their applications one of the following types of plans to establish eligibility to receive MSAP assistance: (a) A desegregation plan required by a court order; (b) a plan required by a State agency or an official of competent jurisdiction; (c) a plan required by the Office for Civil Rights (OCR), United States Department of Education (ED), under Title VI of the Civil Rights Act of 1964 (Title VI plan); or (d) a voluntary plan adopted by the applicant and submitted to us for approval as part of the application.

Under the MSAP regulations, applicants are required to provide all of the information required at 34 CFR 280.20(a)–(g) in order to satisfy the civil rights eligibility requirements found in 34 CFR 280.2(a)(2) and (b).

In addition to the particular data and other items for required and voluntary plans described in the application package, an application must include—

- Signed civil rights assurances (included in the application package);
- A copy of the applicant's plan; and
- An assurance that the plan is being implemented or will be implemented if the application is funded.

Required Plans

1. *Plans required by a court order.* An applicant that submits a plan required by a court order must submit complete and signed copies of all court or State documents demonstrating that the magnet schools are a part of the approved plan. Examples of the types of documents that would meet this requirement include—

- A Federal or State court order that establishes or amends a previous order or orders by establishing additional or different specific magnet schools;
- A Federal or State court order that requires or approves the establishment of one or more unspecified magnet schools or that authorizes the inclusion of magnet schools at the discretion of the applicant.

2. *Plans required by a State agency or official of competent jurisdiction.* An applicant submitting a plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the plan was ordered based upon a determination that State law was violated. In the absence of this documentation, the applicant should consider its plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

3. *Title VI required plans.* An applicant that submits a plan required by OCR under Title VI must submit a complete copy of the plan demonstrating that magnet schools are part of the approved plan.

4. *Modifications to required plans.* A previously approved desegregation plan that does not include the magnet school or program for which the applicant is now seeking assistance must be modified to include the magnet school component. The modification to the plan must be approved by the court, agency, or official that originally approved the plan. An applicant that wishes to modify a previously approved OCR Title VI plan to include different or additional magnet schools must submit the proposed modification for review and approval to the OCR Regional Office that approved its original plan.

An applicant should indicate in its application if it is seeking to modify its previously approved plan. However, all applicants must submit proof of approval of all modifications to their plans to ED by April 12, 2004. Proof of plan modifications should be mailed to the person and address identified in **FOR FURTHER INFORMATION CONTACT** elsewhere in this notice.

Voluntary Plans

A voluntary plan must be approved by ED each time an application is submitted for funding. Even if ED has approved a voluntary plan in an LEA in the past, the plan must be resubmitted for approval as part of the application.

The enrollment and other information as required by the regulations at § 280.20(f) and (g) for applicants with voluntary plans (specific requirements are detailed in the application package) are critical to our determination of an applicant's eligibility under a voluntary plan.

Narrow Tailoring. The purposes of the MSAP include the reduction, elimination or prevention of minority group isolation. In the past grant cycle, all districts submitting voluntary plans were able to achieve this purpose using race-neutral admissions practices. If a district proposes to use race in its voluntary plan, it must provide a justification for why race-neutral approaches would not prove effective. It must also demonstrate that its plan is adequate under Title VI. In order for a voluntary plan involving a racial classification to be adequate under Title VI, the plan must be narrowly tailored to accomplish the objective of reducing, eliminating, or preventing minority group isolation.

IV. Application and Submission Information

1. *Address to Request Application Package:* Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E122, Washington, DC 20202–5961. Telephone: (202) 260–2476 or by e-mail: *steve.brockhouse@ed.gov.*

You may also obtain an application package via Internet. To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

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 a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and competitive preference priorities that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 250 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; Part V, the desegregation plan and related information; or the one-page abstract, the resumes, or letters of support. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:* Applications Available: February 2, 2004.

Deadline for Transmittal of Applications: March 15, 2004.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: May 14, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 280.41. We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 280.31 and are as follows:

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary determines the extent to which the applicant demonstrates—

(i) The effectiveness of its management plan to ensure proper and efficient administration of the project;

(ii) The effectiveness of its plan to attain specific outcomes that—

(A) Will accomplish the purposes of the program;

(B) Are attainable within the project period;

(C) Are measurable and quantifiable; and

(D) For multi-year projects, can be used to determine the project's progress in meeting its intended outcomes;

(iii) The effectiveness of its plan for utilizing its resources and personnel to achieve the objectives of the project, including how well it utilizes key personnel to complete tasks and achieve the objectives of the project;

(iv) How it will ensure equal access and treatment for eligible project participants who have been traditionally underrepresented in courses or activities offered as part of the magnet school, *e.g.*, women and girls in mathematics, science or technology courses, and disabled students; and

(v) The effectiveness of its plan to recruit students from different social, economic, ethnic, and racial backgrounds into the magnet schools.

(b) *Quality of personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the personnel the applicant plans to use on the project.

(2) The Secretary determines the extent to which—

(i) The project director (if one is used) is qualified to manage the project;

(ii) Other key personnel are qualified to manage the project;

(iii) Teachers who will provide instruction in participating magnet schools are qualified to implement the special curriculum of the magnet schools; and

(iv) The applicant, as part of its nondiscriminatory employment practices will ensure that its personnel are selected for employment without regard to race, religion, color, national origin, sex, age, or disability.

(3) To determine personnel qualifications the Secretary considers experience and training in fields related to the objectives of the project, including the key personnel's knowledge of and experience in curriculum development and desegregation strategies.

(c) *Quality of project design.* (35 points)

(1) The Secretary reviews each application to determine the quality of the project design.

(2) The Secretary determines the extent to which each magnet school for which funding is sought will—

(i) Foster interaction among students of different social, economic, ethnic, and racial backgrounds in classroom activities, extracurricular activities, or other activities in the magnet schools (or, if appropriate, in the schools in which the magnet school programs operate);

(ii) Address the educational needs of the students who will be enrolled in the magnet schools;

(iii) Carry out a high quality educational program that will substantially strengthen students' reading skills or knowledge of mathematics, science, history, geography, English, foreign languages, art, music, or vocational skills;

(iv) Encourage greater parental decisionmaking and involvement; and

(v) Improve the racial balance of students in the applicant's schools by reducing, eliminating, or preventing minority group isolation in its schools.

(d) *Budget and resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources and the cost-effectiveness of the budget for the project, including—

(1) The adequacy of the facilities that the applicant plans to use;

(2) The adequacy of the equipment and supplies that the applicant plans to use; and

(3) The adequacy and reasonableness of the budget for the project in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary determines the extent to which the evaluation plan for the project—

(1) Includes methods that are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including its goals for desegregating its students and increasing student achievement; and

(3) Includes methods that are objective and that will produce data that are quantifiable.

(f) *Commitment and capacity.* (10 points)

(1) The Secretary reviews each application to determine whether the applicant is likely to continue the magnet school activities after assistance under the regulations is no longer available.

(2) The Secretary determines the extent to which the applicant—

(i) Is committed to the magnet schools project; and

(ii) Has identified other resources to continue support for the magnet school activities when assistance under this program is no longer available.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118, including information that documents the extent of success in addressing the performance measures described in the following paragraph.

4. *Performance Measures:* The Secretary has established two performance measures for assessing the effectiveness of the MSAP:

(a) The percentage of magnet schools whose student applicant pool reflects a racial and ethnic composition that, in relation to the total enrollment of the school, reduces, eliminates or prevents minority group isolation increases annually. The Secretary has set an overall performance target that calls for the percentage of magnet schools whose student applicant pool would have a beneficial effect on the reduction, prevention or elimination of minority group isolation in participating project schools to increase annually from a baseline established with magnet school applicant data from the first year of the project.

(b) The percentage of magnet schools whose students from major racial and ethnic groups meet or exceed their State's adequate yearly progress standard increases annually, in accordance with their State's plan required by section 1111 of the ESEA. The Secretary has set an overall performance target that calls for the percentage of magnet schools whose students meet or exceed the adequate yearly progress standard to increase annually from a baseline established by participating schools' performance in the school year prior to the beginning of the project.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E122, Washington, DC 20202–5961. Telephone: (202) 260–2476 or by e-mail: *steve.brockhouse@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 in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the

following site: *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: *www.gpoaccess.gov/nara/index.html.*

Dated: January 27, 2004.

Nina Shokraii Rees,

Deputy Under Secretary for Innovation and Improvement.

[FR Doc. 04–1949 Filed 1–30–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 280

RIN 1855–AA01

Magnet Schools Assistance Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Magnet Schools Assistance Program (MSAP) regulations to reflect changes made to the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB).

DATES: These regulations are effective March 3, 2004.

FOR FURTHER INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E122, Washington, DC 20202–6140. Telephone: (202) 260–2476 or via Internet: *steve.brockhouse@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.

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SUPPLEMENTARY INFORMATION: These regulations implement changes to the MSAP made by the NCLB (Pub. L. 107–110), enacted January 8, 2002. The changes align the regulations for the MSAP with the changes made to the program when the MSAP was reauthorized as part of the NCLB.

To reflect revisions to the MSAP's purposes made by section 5301(b) of the ESEA, in these final regulations, we make several changes to § 280.1 regarding the purpose of the MSAP. First, in § 280.1(a), (b) and (c), we clarify the purpose of the MSAP. We also add two new paragraphs, § 280.1(e) and (f), regarding the purpose of the MSAP. These two paragraphs reflect the addition of support for efforts to improve local educational agencies' (LEAs') capacity to continue magnet programs at a high performance level after Federal funding ends and for efforts to ensure that all students enrolled in magnet schools have equitable access to high quality education.

In accordance with section 5305(b) of the ESEA, we are making several changes to § 280.20. Specifically, we revise the assurance in § 280.20(b)(2) regarding teacher qualifications and clarify requirements in § 280.20(i) concerning student academic achievement. In § 280.20(b)(2), we change the assurance related to teachers who would be employed, from State-certified or licensed teachers, to teachers who are highly qualified in the courses of instruction assisted under a grant. Section 280.20(i)(4)(i) adds a requirement that an application must include a description of how student academic achievement will be improved for all students attending the magnet schools included in a project.

Based on the language in section 5307(b) of the ESEA that describes the subject areas and types of skills that may be addressed using MSAP funds, we are making only one adjustment to the selection criteria in § 280.31. In the ''Project design'' criterion, we have changed § 280.31(c)(2)(iii) to add ''technological'' and ''professional'' skills to the existing list of subjects and skills that may be addressed in a magnet program.

Section 5306 of the ESEA includes only three priorities—addressing need for assistance, new or revised magnet schools, and selection of students. We remove from § 280.32 two other priorities—one addressing innovative approaches and systemic reform (§ 280.32(e)) and one addressing collaborative efforts (§ 280.32(f)).

Consistent with section 5307(a) and (b) of the ESEA, we are making several changes to § 280.40. In § 280.40(a), we clarify that professional development costs are not considered planning costs that are subject to the restrictions in § 280.41(a). Further, both § 280.40(b) and (c) clarify that funds used for books, materials, equipment, and teachers must be directly related to improving student academic achievement based on the State's challenging academic content standards and student achievement standards. Additionally, we amend § 280.40 by adding three new paragraphs, § 280.40(f) through (h). These paragraphs specifically authorize activities to build capacity to operate the magnet programs after the grant ends, enable magnet schools to serve students who enrolled in the school but not in the magnet program at the school, and permit flexibility in designing magnet schools.

Finally, in accordance with section 5309(b) of the ESEA, we revise § 280.41 to adjust the amount of funds that may be used for planning in each year of a project and remove the prohibition against the use of funds for planning after the third year that had been in § 280.41(d).

Executive Order 12866

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

Because the Secretary has chosen to regulate only to the extent necessary to reflect changes made to the ESEA, as amended by the NCLB, LEAs have considerable flexibility in implementing the provisions of the MSAP. Consequently, the potential costs associated with the regulations are minimal. Benefits of the regulations include the addition of new uses of funds that provide LEAs greater latitude in the design of projects, the removal of restrictions on the amount of funds that may be used for professional development, greater flexibility in the use of funds for planning activities, and elimination of obsolete priorities.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes to the ESEA and remove obsolete regulatory provisions. The changes do not establish or affect substantive policy. Therefore, under 5 U.S.C. 553(b)(B) the Secretary has determined that proposed regulations are unnecessary and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that are affected by these regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations will not have a significant economic impact on the small LEAs

affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

Based on our own review, we have determined that these regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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You may also view this document in PDF at the following site: *http://www.ed.gov/programs/magnet/index.html*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.165A Magnet Schools Assistance Program.)

The Secretary of Education has delegated authority to the Deputy Under Secretary for Innovation and Improvement to issue these amendments to 34 CFR chapter II.

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs–education, Magnet schools, Reporting and recordkeeping requirements.

Dated: January 27, 2004.

Nina Shokraii Rees,

Deputy Under Secretary for Innovation and Improvement.

■ For the reasons discussed in the preamble, the Secretary amends part 280 of title 34 of the Code of Federal Regulations as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

■ 1. The authority citation for part 280 is revised to read as follows:

Authority: 20 U.S.C. 7231–7231j, unless otherwise noted.

■ 2. Section 280.1 is amended by:
■ A. In the introductory text, removing the punctuation ‘‘,:’’ and adding, in its place, the punctuation ‘‘—’’.
■ B. In paragraph (a), adding the words ‘‘, which shall include assisting in the efforts of the United States to achieve voluntary desegregation in public schools’’ before the punctuation ‘‘;’’.
■ C. Revising paragraphs (b) and (c).
■ D. In paragraph (d), removing the word ‘‘grasp’’ and adding, in its place, the word ‘‘attainment’’; adding the words ‘‘, technological, and professional’’ after the word ‘‘vocational’’; and removing the period at the end of the paragraph and adding, in its place, the punctuation ‘‘;’’.
■ E. Adding new paragraphs (e) and (f).
■ F. Revising the authority citation following paragraph (f).

The revisions and additions read as follows:

§ 280.1 What is the Magnet Schools Assistance Program?

* * * * *

(b) The development and implementation of magnet school projects that will assist LEAs in achieving systemic reforms and providing all students the opportunity to meet challenging State academic content standards and student academic achievement standards;

(c) The development and design of innovative educational methods and practices that promote diversity and increase choices in public elementary schools and public secondary schools and public educational programs;

* * * * *

(e) Improvement of the capacity of LEAs, including through professional development, to continue operating magnet schools at a high performance level after Federal funding for the magnet schools is terminated; and

(f) Ensuring that all students enrolled in the magnet school programs have equitable access to high quality education that will enable the students to succeed academically and continue with postsecondary education or productive employment.

(Authority: 20 U.S.C. 7231)

■ 3. Section 280.2 is amended by revising the authority citation following paragraph (b) to read as follows:

§ 280.2 Who is eligible to apply for a grant?

* * * * *

(Authority: 20 U.S.C. 7231c)

■ 4. Section 280.3 is amended by:
■ A. In paragraph (a), removing the words ‘‘except that § 75.253(c) (relating to reducing a subsequent year’s award by the amount remaining available from the grantee’s current award) does not apply to this program,’’; and by removing the words ‘‘(Uniform Administrative Requirements for State and Local Governments)’’ and adding, in their place, the words ‘‘(Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments)’’.
■ B. Revising the authority citation following paragraph (b) to read as follows:

§ 280.3 What regulations apply to this program?

* * * * *

(Authority: 20 U.S.C. 7231–7231j)

■ 5. Section 280.4 is amended by:
■ A. In paragraph (a), removing the words ‘‘Award’’, ‘‘Grant’’, and ‘‘Supplies’’.
■ B. In paragraph (b), revising the definitions of ‘‘*Act*’’ and ‘‘*Magnet school*’’.
■ C. Revising the authority citation following paragraph (b).

The revisions read as follows:

§ 280.4 What definitions apply to this program?

* * * * *

(b) * * *

Act means the Elementary and Secondary Education Act of 1965 as amended by title V, Part C of the No

Child Left Behind Act of 2001, Pub. L. 107–110 (20 U.S.C. 7231–7231j).

* * * * *

Magnet school means a public elementary school, public secondary school, public elementary education center, or public secondary education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

* * * * *

(Authority: 20 U.S.C. 7231–7231j)

■ 6. Section 280.20 is amended by:
■ A. In paragraph (b)(1), removing the figure ''5102'' and adding, in its place, the figure ''5301(b)''.
■ B. In paragraph (b)(2), adding the words ''highly qualified'' after the word ''employ'' and removing the words ''who are certified or licensed by the State to teach, or supervise others who are teaching, the subject matter of the courses of instruction''.
■ C. In paragraph (b)(7), removing the first occurrence of the word ''projects'' and adding, in its place, the word ''program''; and removing the words ''those projects'', and adding, in their place, the words ''the program, consistent with desegregation guidelines and the capacity of the applicant to accommodate students''.
■ D. In paragraph (i)(1), removing the word ''project'' and adding, in its place, the word ''programs''.
■ E. In paragraph (i)(2), adding the word ''academic'' after the word ''student''.
■ F. Revising paragraphs (i)(3) and (i)(4).
■ G. In paragraph (i)(5), removing the word ''projects'' and adding, in its place, the word ''program''.
■ H. Revising the OMB approval parenthetical and the authority citation following paragraph (i).

The revisions read as follows:

§ 280.20 How does one apply for a grant?

* * * * *

(i) * * *

(3) How the LEA or consortium of LEAs will continue the magnet schools program after assistance under this part is no longer available, including, if applicable, why magnet schools previously established or supported with Magnet Schools Assistance Program grant funds cannot be continued without the use of funds under this part;

(4) How assistance will be used to—

(i) Improve student academic achievement for all students attending the magnet school programs; and

(ii) Implement services and activities that are consistent with other programs under the Act and other statutes, as appropriate; and

* * * * *

(Approved by the Office of Management and Budget under control number 1855–0011)

(Authority: 20 U.S.C. 7231d)

■ 7. Section 280.30 is amended by:
■ A. In paragraph (c), removing the figure ''45'' and adding, in its place, the figure ''30''.
■ B. Revising the authority citation following paragraph (c) to read as follows:

§ 280.30 How does the Secretary evaluate an application?

* * * * *

(Authority: 20 U.S.C. 7231–7231j)

■ 8. Section 280.31 is amended by:
■ A. In paragraph (c)(2)(iii), adding the words ''to improving'' after the second occurrence of the word ''or'' and adding the words '', technological, and professional'' after the word ''vocational''.
■ B. Revising the OMB approval parenthetical and the authority citation following paragraph (f) to read as follows:

§ 280.31 What selection criteria does the Secretary use?

* * * * *

(Approved by the Office of Management and Budget under control number 1855–0011)

(Authority: 20 U.S.C. 7231–7231j)

■ 9. Section 280.32 is amended by:
■ A. In paragraph (a), removing the words ''through (f)'' and adding, in their place, the words ''through (d)''.
■ B. Removing paragraphs (e) and (f).
■ C. Revising the authority citation following paragraph (d) to read as follows:

§ 280.32 How is priority given to applicants?

* * * * *

(Authority: 20 U.S.C. 7231e)

■ 10. Section 280.33 is amended by revising the authority citation following paragraph (b) to read as follows:

§ 280.33 How does the Secretary select applications for new grants with funds appropriated in excess of $75 million?

* * * * *

(Authority: 20 U.S.C. 7231j)

■ 11. Section 280.40 is amended by:
■ A. In paragraph (a), removing the words ''and (d)'' and adding, in their place, the words ''and do not include activities described under paragraph (f) of this section''.
■ B. In the introductory text of paragraph (b), removing the word ''thereof'' and adding, in its place, the words ''of materials, equipment and computers''.
■ C. In paragraph (b)(2), removing the word ''the'' and adding, in its place, the words ''student academic achievement based on the State's challenging academic content standards and student academic achievement standards or directly related to improving student''; and adding the words '', technological, or professional'' after the word ''vocational''.
■ D. In paragraph (c)(1), removing the words ''certified or licensed by the State'' and adding, in their place, the words ''highly qualified''.
■ E. In paragraph (c)(3), removing the word ''the'' and adding, in its place, the words ''student academic achievement based on the State's challenging academic content standards and student academic achievement standards or directly related to improving student''; and adding the words '', technological, or professional'' after the word ''vocational''.
■ F. Adding new paragraphs (f), (g), and (h).
■ G. Revising the authority citation following paragraph (h).

The additions and revision read as follows:

§ 280.40 What costs are allowable?

* * * * *

(f) Activities, which may include professional development, that will build the recipient's capacity to operate magnet school programs once the grant period has ended.

(g) Activities to enable the LEA or consortium of LEAs to have more flexibility in the administration of a magnet school program in order to serve students attending a school who are not enrolled in a magnet school program.

(h) Activities to enable the LEA or consortium of LEAs to have flexibility in designing magnet schools for students in all grades.

(Authority: 20 U.S.C. 7231f)

■ 12. Section 280.41 is amended by:
■ A. Revising paragraph (a).
■ B. In paragraph (b), adding the word ''or'' after the punctuation '';''.
■ C. In paragraph (c), removing the word ''; or'' and adding, in its place, the punctuation ''.''.
■ D. Removing paragraph (d).
■ E. Revising the authority citation following paragraph (c).

The revisions read as follows:

§ 280.41 What are the limitations on allowable costs?

* * *

(a) Expend for planning more than 50 percent of the funds received for the

first fiscal year, and 15 percent of the funds received for the second or the third fiscal year;

* * * * *

(Authority: 20 U.S.C. 7231g, 7231h(b))

[FR Doc. 04–1950 Filed 1–30–04; 8:45 am]

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Federal Register

Monday,
February 2, 2004

Part III

Department of Education

Community Technology Centers Program; Proposed Requirements, Priorities, and Selection Criteria; Notice

DEPARTMENT OF EDUCATION

RIN 1830–ZA05

Community Technology Centers Program; Proposed Requirements, Priorities, and Selection Criteria

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice.

SUMMARY: The Acting Assistant Secretary for Vocational and Adult Education proposes requirements, priorities, and selection criteria under the Community Technology Centers (CTC) Program. These proposed requirements, priorities, and selection criteria clarify the funding ranges and matching requirements for this program. The proposed priorities and selection criteria are intended to strengthen the quality of applications and provide greater understanding of the Department's intent regarding the direction of this program. The Assistant Secretary may use these requirements, priorities, and selection criteria for competitions in fiscal year (FY) 2004 and later years.

DATES: We must receive your comments on or before March 3, 2004.

ADDRESSES: Address all comments about these proposed requirements, priorities, and selection criteria to Karen Holliday, U.S. Department of Education, OVAE, MES room 5520, 400 Maryland Avenue, SW., Washington, DC 20202–7100. If you prefer to send your comments through the Internet, use the following address: *karen.holliday@ed.gov.* You must include the phrase ''CTC Comments'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Karen Holliday, Telephone (202) 358–3339.

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 contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed requirements, priorities, and selection criteria. To ensure that your comments have maximum effect in developing the notice of final requirements, priorities and selection criteria, we urge you to identify clearly the specific requirement, priority, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed requirements, priorities, and selection criteria. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed requirements, priorities, and selection criteria at 330 C Street, SW., room 5520, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed requirements, priorities, and selection criteria. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The purpose of the CTC Program is to assist eligible applicants to create or expand community technology centers that provide disadvantaged residents of economically distressed urban and rural communities with access to information technology and related training. Eligible applicants are community-based organizations (including faith-based organizations), State and local educational agencies (LEAs) (including charter schools that are LEAs), institutions of higher education, and other entities, such as foundations, libraries, museums, public and private nonprofit organizations, and for-profit businesses, or consortia thereof. To be eligible, an applicant must also have the capacity to significantly expand access to computers and related services for disadvantaged residents of economically distressed urban and rural communities who would otherwise be denied such access.

The CTC program competitions the Department conducted in FY 2003 gave absolute priority to applicants seeking to improve the academic achievement of low-achieving high school students while continuing to provide a community technology center for all members of their community. Grant recipients were required to meet this priority as they developed and implemented their plans to create or expand community technology centers for increasing access to information technology and related training for disadvantaged residents of distressed urban or rural communities, and to evaluate the effectiveness of their projects. Specifically, we permitted grantees to use funds to provide services and activities that use technology to improve academic achievement, such as academic enrichment activities for children and youth, career development, adult education, and English language instruction for individuals with limited English proficiency. Other authorized activities included, among other things, support for personnel, equipment, networking capabilities, and other infrastructure costs. We did not permit grantees to use funds for construction, food, stipends, childcare, or security personnel.

The Department held two competitions with FY 2003 funds. The first competition used 75 percent of available funds and made grants to the highest-ranking applicants that met the absolute priorities specified for the competition. The second competition used 25 percent of available funds for the highest-ranking novice applicants that met similar absolute priorities.

For FY 2004, the Department proposes requirements, priorities, and selection criteria similar to those established in FY 2003. Yet we are clarifying some of the requirements, priorities, and selection criteria to refine the application process under the CTC program, while continuing to support and create local technology programs that are among the strongest in the nation.

Discussion of Proposed Requirements, Priorities, and Selection Criteria

We will announce the final requirements, priorities, and selection criteria in a notice in the **Federal Register**. We will determine the final requirements, priorities, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional requirements, priorities, or selection criteria, subject to meeting applicable rulemaking requirements.

Targeted Applicants

We held two competitions with FY 2003 funds for the CTC program. The first competition used 75 percent of available funds and made grants to the highest-ranking applicants that met the absolute priorities, and the second competition used 25 percent of available funds for the highest-ranking novice applicants that met similar absolute priorities.

For FY 2004, we are proposing that one combined competition be conducted for both general and novice applicants, using the same priorities and selection criteria. The Department will rank and fund the two groups separately. At least seventy-five percent of the funds will be set aside for general applicants and up to twenty-five percent will be set aside for novice applicants.

Rationale

The Department supports the idea that novice applicants be given special consideration when applying for discretionary grant funds. Last year, we pursued that strategy by setting aside 25 percent of program funds for novice applications. We hope that continuing this practice will yield a similar result this year.

Range of Awards

The Department proposes to establish $250,000 as the minimum award and $500,000 as the maximum award for FY 2004, and proposes that no grant application will be considered for funding if it requests an award amount outside the funding range of $250,000 to $500,000.

Rationale

In our work with CTC program grantees since 1999, we have acquired information to support the idea that programs must be of at least a moderate funding amount in order to significantly impact increased access to technology at the local level. The Department believes that the minimum award threshold, coupled with the applicant's mandatory match, ensures the applicant's ability to be effective. The maximum threshold is necessary to ensure that the Department is able to fund a significant number of grantees, and to promote access to technology in a number of geographic areas.

Matching Funds Requirement

Pursuant to Section 5512(c) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), Federal funds may not be used to pay for more than 50 percent of total CTC project costs.

The statute requires that to receive a grant award under the CTC competition, each applicant must furnish from non-Federal sources at least 50 percent of its total project costs. Applicants may satisfy this requirement in cash or in kind, fairly evaluated, including services. Accordingly, we are proposing to clarify this requirement as follows: each applicant must provide a dollar-for-dollar match of the amount requested from the Federal Government. An example of an allowable match would be a situation in which an applicant requested $250,000 in Federal funds (the mandatory minimum request). In that situation, the applicant would be requested to furnish at least $250,000 from non-Federal funds in cash or in kind, fairly evaluated, resulting in a total project cost of $500,000.

Rationale

Clarification of the matching requirement is necessary to eliminate the possibility of any confusion among applicants.

Discussion of Proposed Priorities

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these proposed priorities, we invite applications through a notice in the **Federal Register**.

Priorities

When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute Priority

Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive Preference Priority

Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational Priority

Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

We propose to establish the following priorities for the CTC general competition:

Proposed Priority 1

We propose a priority for projects that include a partnership with a community-based organization and a local educational agency (or school, which may be a charter school). To meet the priority, an applicant must clearly identify the partnering agencies and include a detailed plan of their working relationship, including a project budget that reflects fund disbursements to the various partnering agencies. Thus, the Secretary would give priority to projects in which the delivery of instructional services includes:

1. A community-based organization (CBO), which may include a faith-based organization, and
2. A local educational agency (LEA) (or school, including private, non-profit schools).

A CBO is not required to submit a joint application with an LEA or school when applying for funds; however, the proposed project must deliver the educational services in partnership with an LEA (or school).

Likewise, an LEA (or school) is not required to submit a joint application with a CBO when applying for funds; however, the proposed project must deliver the educational services in partnership with a CBO.

Applicants that are neither CBOs nor LEAs must enter into a partnership that includes a CBO and an LEA (or school) in the delivery of educational services.

Rationale

The Secretary has determined that the participation of both CBOs and LEAs (or schools) is critical to the success of CTC projects. Many academic support programs for adolescents report that securing and maintaining a high level of student participation can be challenging. Involving CBOs in service delivery will help projects better master this challenge, such as by providing expanded outreach and support to students, joint programming, or alternative service sites that are in or near the neighborhoods where students live. Community-based and faith-based partners bring other important resources to the table as well, such as assistance in recruiting staff and volunteers. LEAs (or schools) also are essential partners. Their involvement is needed to identify the students who are most in need of academic support and to ensure that the project's curriculum, assessment, and instructional practices are consistent with those of the schools the students attend.

Note: Applicants should bear in mind that although LEAs are eligible under this program, individual public schools are not eligible applicants.

Proposed Priority 2

We propose a priority pursuant to which applicants would meet the following criteria:

Applicants must state whether they are proposing a local or State project. A local project must include one or more CTCs; a State project must include two or more CTCs. In addition, the project must be carried out by or in partnership with one or more LEAs or secondary schools that provide supplementary instruction in the core academic subjects of reading or language arts, or mathematics, to low-achieving secondary school students. Projects must serve students who are entering or enrolled in grades 9 through 12 and who: (1) Have academic skills significantly below grade level, or (2) who have not attained proficiency on State academic assessments as established by NCLB. Supplementary instruction may be delivered before or after school or at other times when school is not in session. Instruction may also be provided while school is in session, provided that it increases the amount of time students receive instruction in core academic subjects and does not require their removal from class. The instructional strategies used must be based on practices that have proven effective for improving the academic performance of low-achieving students. If these services are not provided directly by an LEA or secondary school, they must be provided in partnership with an LEA or secondary school.

Rationale

We believe that such supplemental instruction is important for the students residing in the geographic areas the CTC program intends to serve. Further, the Department encourages local CBOs and other entities to expand their capacity for becoming supplemental service providers through the effective use of the local CTC.

Proposed Priority 3

We propose a priority to focus CTC activities on adult education and family literacy services.

Under this proposed priority, we would give priority to projects that provide adult education and family literacy activities through technology and the Internet, including adult basic education, adult secondary education, and English literacy instruction.

Rationale

Section 5513(b)(3)(B) of the ESEA provides that funds under this program may be used for CTC activities focusing on adult education and family literacy services. We believe that projects using technology and the Internet to provide adult education are critical to improving adult academic achievement.

Proposed Priority 4

We propose a priority to focus CTC activities on career development and job preparation activities.

Under this proposed priority we would give priority to projects that provide career development and job preparation activities in high-demand occupational areas.

Rationale

Section 5513(b)(3)(C) of the ESEA provides that program funds may be used to provide services relating to career development and job preparation. We believe that career development and job preparation activities in high-demand occupational areas will benefit greatly the students residing in areas that CTC projects serve.

Proposed Selection Criteria

We propose that the following selection criteria be used for this competition:

Need for the Project

In evaluating the need for the proposed project, we consider the extent to which the proposed project will—

(1) Serve students from low-income families;

(2) Serve students entering or enrolled in secondary schools that are among the secondary schools in the State that have the highest numbers or percentages of students who have not achieved proficiency on the State academic assessments required by Title I of ESEA, or who have academic skills in reading or language arts, or mathematics, that are significantly below grade level;

(3) Serve students who have the greatest need for supplementary instruction, as indicated by their scores on State or local standardized assessments in reading or language arts, or mathematics, or some other local measure of performance in reading or language arts, or mathematics; and

(4) Create or expand access to information technology and related training for disadvantaged residents of distressed urban or rural communities.

Quality of the Project Design

In evaluating the quality of the design of the proposed project, we consider the extent to which the proposed project will—

(1) Provide instructional services that will be of sufficient size, scope, and intensity to improve the academic performance of participating students;

(2) Incorporate strategies that have proven effective for improving the academic performance of low-achieving students;

(3) Implement strategies in recruiting and retaining students that have proven effective;

(4) Provide instruction that is aligned with the secondary school curricula of the schools in which the students to be served by the grant are entering or enrolled; and

(5) Provide high-quality, sustained, and intensive professional development for personnel who provide instruction to students.

Quality of the Management Plan

In evaluating the quality of the management plan, we consider the extent to which the proposed project—

(1) Outlines specific, measurable goals, objectives, and outcomes to be achieved by the proposed project;

(2) Assigns responsibility for the accomplishment of project tasks to specific project personnel, and provides timelines for the accomplishment of project tasks;

(3) Requires appropriate and adequate time commitments of the project director and other key personnel to achieve the objectives of the proposed project; and

(4) Includes key project personnel, including the project director and other staff, with appropriate qualifications and relevant training and experience.

Adequacy of Resources

In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant;

(2) The extent to which a preponderance of project resources will be used for activities designed to improve the academic performance of low-achieving students in reading and/or mathematics;

(3) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project; and

(4) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

Quality of the Evaluation

In determining the quality of the evaluation, we consider the extent to which the proposed project—

(1) Includes a plan that utilizes evaluation methods that are feasible and appropriate to the goals and outcomes of the project;

(2) Will regularly examine the progress and outcomes of participating students on a range of appropriate performance measures and has a plan for utilizing such information to improve project activities and instruction;

(3) Will use an independent, external evaluator with the necessary background and technical expertise to assess the performance of the project; and

(4) Effectively demonstrates that the applicant has adopted a rigorous evaluation design.

Executive Order 12866

This notice of proposed requirements, priorities, and selection criteria has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed requirements, priorities, and selection criteria are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed requirements, priorities, and selection criteria, we have determined that the benefits of the proposed requirements, priorities, and selection criteria justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Benefits

Elsewhere in this notice we discuss the potential benefits of these proposed requirements, priorities, and selection criteria.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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(Catalog of Federal Domestic Assistance Number 84.341—Community Technology Centers Program)

Program Authority: 20 U.S.C. 7263.

Dated: January 29, 2004.

Susan Sclafani,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 04–2126 Filed 1–29–04; 1:41 pm]

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CFR PARTS AFFECTED DURING FEBRUARY

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.

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 FEBRUARY 2, 2004

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National Forest System timber sale and disposal:

Timber sale contracts extension to facilitate urgent timber removal from other lands; published 1-2-04

COMMERCE DEPARTMENT

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Fishery conservation and management:

Northeastern United States fisheries—

Atlantic mackerel, squid, and butterfish; published 2-2-04

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California; published 12-4-03

Tennessee; published 2-2-04

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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

Food importation notice to FDA; correction; published 2-2-04

LEGAL SERVICES CORPORATION

Outside practice of law by full-time legal services attorneys; published 12-2-03

TREASURY DEPARTMENT

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Corporate activities:

Electronic filings by national banks; published 1-2-04

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Alcohol and Tobacco Tax and Trade Bureau

Alcohol; viticultural area designations:

Russian River Valley, Sonoma County, CA; published 12-2-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

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201–End	(869–050–00168–3)	22.00	July 1, 2003
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
*400–429	(869–050–00170–5)	62.00	Oct. 1, 2003
430–End	(869–050–00171–3)	64.00	Oct. 1, 2003
43 Parts:			
1–999	(869–050–00172–1)	55.00	Oct. 1, 2003
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–050–00175–6)	60.00	Oct. 1, 2003
200–499	(869–050–00176–4)	33.00	[9] Oct. 1, 2003
500–1199	(869–050–00177–2)	50.00	Oct. 1, 2003
1200–End	(869–050–00178–1)	60.00	Oct. 1, 2003
46 Parts:			
1–40	(869–050–00179–9)	46.00	Oct. 1, 2003
*41–69	(869–050–00180–2)	39.00	Oct. 1, 2003
70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
90–139	(869–050–00182–9)	44.00	Oct. 1, 2003
140–155	(869–050–00183–7)	25.00	[9] Oct. 1, 2003
156–165	(869–050–00184–5)	34.00	[9] Oct. 1, 2003
*166–199	(869–050–00185–3)	46.00	Oct. 1, 2003
200–499	(869–050–00186–1)	39.00	Oct. 1, 2003
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
47 Parts:			
*0–19	(869–050–00188–8)	61.00	Oct. 1, 2003
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–050–00190–0)	39.00	Oct. 1, 2003
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
*1 (Parts 52–99)	(869–050–00194–2)	50.00	Oct. 1, 2003
2 (Parts 201–299)	(869–050–00195–1)	55.00	Oct. 1, 2003
3–6	(869–050–00196–9)	33.00	Oct. 1, 2003
7–14	(869–050–00197–7)	61.00	Oct. 1, 2003
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–050–00199–3)	38.00	[9] Oct. 1, 2003
49 Parts:			
1–99	(869–050–00200–1)	60.00	Oct. 1, 2003
100–185	(869–050–00201–9)	63.00	Oct. 1, 2003
186–199	(869–050–00202–7)	20.00	Oct. 1, 2003

Title	Stock Number	Price	Revision Date
*200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
*400–599	(869–050–00204–3)	63.00	Oct. 1, 2003
600–999	(869–050–00205–1)	22.00	Oct. 1, 2003
1000–1199	(869–050–00206–0)	26.00	Oct. 1, 2003
1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
1–16	(869–050–00208–6)	11.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
200–599	(869–050–00213–2)	44.00	Oct. 1, 2003
*600–End	(869–050–00214–1)	61.00	Oct. 1, 2003
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2003
Individual copies		2.00	2003
Complete set (one-time mailing)		298.00	2002
Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 2004

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
Feb 2	Feb 17	March 3	March 18	April 2	May 3
Feb 3	Feb 18	March 4	March 19	April 5	May 3
Feb 4	Feb 19	March 5	March 22	April 5	May 4
Feb 5	Feb 20	March 8	March 22	April 5	May 5
Feb 6	Feb 23	March 8	March 22	April 6	May 6
Feb 9	Feb 24	March 10	March 25	April 9	May 10
Feb 10	Feb 25	March 11	March 26	April 12	May 10
Feb 11	Feb 26	March 12	March 29	April 12	May 11
Feb 12	Feb 27	March 15	March 29	April 12	May 12
Feb 13	March 1	March 15	March 29	April 13	May 13
Feb 17	March 3	March 18	April 2	April 19	May 17
Feb 18	March 4	March 19	April 5	April 19	May 18
Feb 19	March 5	March 22	April 5	April 19	May 19
Feb 20	March 8	March 22	April 5	April 20	May 20
Feb 23	March 9	March 24	April 8	April 23	May 24
Feb 24	March 10	March 25	April 9	April 26	May 24
Feb 25	March 11	March 26	April 12	April 26	May 25
Feb 26	March 12	March 29	April 12	April 26	May 26
Feb 27	March 15	March 29	April 12	April 27	May 27